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सं. 17] नई दिल्ली, अप्रैल 20—अप्रैल 26, 2014, शनिवार/चैत्र 30—वैशाख 6, 1936
No. 17] NEW DELHI, APRIL 20—APRIL 26, 2014, SATURDAY/CHAITRA 30—VAISAKHA 6, 1936

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक संकलन के रूप में रखा जा सके
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)
PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं
Statutory Orders and Notifications Issued by the Ministries of the Government of India
(Other than the Ministry of Defence)

कार्मिक, लोक शिकायत तथा पेंशन मंत्रालय

(कार्मिक और प्रशिक्षण विभाग)

नई दिल्ली, 17 अप्रैल, 2014

का.आ. 1255 .—केन्द्रीय सरकार एतद्वारा दंड प्रक्रिया संहिता, 1973 (1974 का अधिनियम सं. 2) की धारा 24 की उप-धारा (8) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए दिल्ली उच्च न्यायालय तथा सर्वोच्च न्यायालय, नई दिल्ली में दिल्ली विशेष पुलिस स्थापना (सीबीआई) द्वारा आरोपी श्री आर. वासुदेवन और अन्य व्यक्तियों के विरुद्ध आरसी 03(ए)/2009-एसीयू(IX), नई दिल्ली के संबंध में अभियोजन अपीलों, पुनरीक्षणों या इससे उत्पन्न अन्य मामलों का संचालन करने के लिए श्री दयान कृष्णन, वकील को दिल्ली विशेष पुलिस स्थापना (केन्द्रीय अन्वेषण ब्यूरो) के विशेष लोक अभियोजक के पद पर नियुक्त करती है।

[फा. सं. 225/31/2012-ए वी डी-II]

राजीव जैन, अवर सचिव

MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES AND PENSIONS
(Department of Personnel and Training)

New Delhi, the 17th April, 2014

S.O. 1255.—In exercise of the powers conferred by sub-section (8) of Section 24 of the Code of Criminal Procedure, 1973 (Act No. 2 of 1974), the Central Government hereby appoints Shri Dayan Krishnan, Advocate as Special Public Prosecutor of the Delhi Special Police Establishment (Central Bureau of Investigation) in Delhi High Court and the Supreme Court at New Delhi for conducting the prosecution appeals, revisions or other matters arising out of the cases RC 03(A)/2009-ACU (IX), New Delhi against accused Shri R. Vasudevan and others, charge sheeted by the Delhi Special Police Establishment (CBI).

[F. No. 225/31/2012-AVD-II]

RAJIV JAIN, Under Secy.

वित्त मंत्रालय

(वित्तीय सेवाएं विभाग)

नई दिल्ली, 22 अप्रैल, 2014

का.आ. 1256.—कौशल विकास और शिक्षा ऋण के लिए ऋण गारंटी कोष की स्थापना के लिए मंत्रिमंडल के अनुमोदन (मामला सं. 364) के अनुसरण में भारत सरकार, एतद्वारा, श्री एस. एस. भट्ट, महाप्रबंधक, केनरा बैंक को बैंकिंग क्षेत्र के विशेषज्ञ के रूप में निधियों की संबंधित प्रबंधन समिति के सदस्य के रूप में नियुक्त करती है।

[फा. सं. 1/12/2011-आईएफ-II]

उदय भान सिंह, अवर सचिव

MINISTRY OF FINANCE

(Department of Financial Services)

New Delhi, the 22nd April, 2014

S.O. 1256.—Pursuant to the Cabinet approval (case No. 364) for establishment of Credit Guarantee Funds for Skill Development and Education Loans, the Central Government hereby appoints Shri S. S. Bhat, General Manager, Canara Bank as member in the respective Management Committees of the Funds as expert of banking sector.

[F.No. 1/12/2011-IF-II]

UDAI BHAN SINGH, Under Secy.

उपभोक्ता मामले, खाद्य और सार्वजनिक वितरण मंत्रालय

(उपभोक्ता मामले विभाग)

(भारतीय मानक ब्यूरो)

नई दिल्ली, 11 अप्रैल, 2014

का.आ. 1257.—भारतीय मानक ब्यूरो (प्रमाणन) विनियम, 1988 के नियम 4 के उप-नियम (5) के अनुसरण में भारतीय मानक ब्यूरो एतद्वारा अधिसूचित करता है कि जिन लाइसेंसों के विवरण नीचे अनुसूची में दिए गए हैं, वे स्वीकृत कर दिए गए हैं :—

अनुसूची

क्रम सं.	लाइसेंस संख्या	स्वीकृत करने की तिथि, वर्ष/माह	लाइसेंसधारी का नाम एवं पता	भारतीय मानक का शीर्षक	भा मा संख्या	भाग	अनु वर्ष
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8) (9)
1.	2850764	03-02-2014	मिरांबो इंजिनियरिंग शैड नंबर 18 से 24, प्लॉट नंबर 279, मित्तल एस्टेट, उजाला सर्कल के पास, सरखेज ओवर ब्रीज के नीचे, सरखेज, अहमदाबाद-382210	सेफस	550	1	- 2003
2.	2850966	03-02-2014	शहिल गोल्ड पेलेस, 2349, मानेकनाथजी मंदिर के सामने, मानेक चौक, अहमदाबाद-380001	स्वर्ण तथा स्वर्ण धातुओं के आभूषणों शिल्पकारी शुद्धता एवं मुहरांकन	1417	-	- 1999
3.	2850865	04-02-2014	एच पी टी बिबरेजिस, 184, आर जे डी टैक्सटाईल पार्क, सूरत-हजिरा रोड, इच्छापुर, ताल. चोरासी, सूरत-394510	पैकेजबंद पेयजल (अदर दैन पैकेजड नेचुरल मिनरल वाटर)	14543	-	- 2004

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
4.	2851261	04-02-2014	गोपीनाथ जवैलर्स, 4/345, कंसारा बाजर, डोलका, अहमदाबाद-387810	स्वर्ण तथा स्वर्ण धातुओं के आभूषणों शिल्पकारी शुद्धता एवं मुहरांकन	1417	-	-	1999
5.	2851463	06-02-2014	चंदन खुशाल एंटरप्राइस प्रा. लिमिटेड, 317, सहयोग इंडस्ट्रियल एस्टेट, पोस्ट कारेली, ता. पालसाना सूरत-394310	कवर्ड इलैक्ट्रोड फार मैनुयल मैटल आर्क वेलडिंग ऑफ कार्बन तथा कार्बन मैंगेनिज स्टील	814	-	-	2004
6.	2853265	13-02-2014	श्री बहूचर बिबरेजिस, बी-73, मारुति टैनामेंट, भावना स्कूल के पास, वस्त्राल रोड, अहमदाबाद-380018	पैकेजबंद पेयजल (अदर दैन पैकेजड नेचुरल मिनरल वाटर)	14543	-	-	2004
7.	2855067	13-02-2014	किरण जवैलरी प्रा. लिमिटेड, 4-5-105, गोविंद चकला, स्टेशन रोड, विसनगर, मेहसाना-384315	स्वर्ण तथा स्वर्ण धातुओं के आभूषणों शिल्पकारी शुद्धता एवं मुहरांकन	1417	-	-	1999
8.	2855168	13-02-2014	सुवर्णकृपा ओरनामेंट्स प्रा. लिमिटेड बी/14, दुर्गा शॉपिंग सेंटर, नवरंग स्कूल के पास, अंबिकानगर, ओढव, अहमदाबाद-382415	स्वर्ण तथा स्वर्ण धातुओं के आभूषणों शिल्पकारी शुद्धता एवं मुहरांकन	1417	-	-	1999
9.	2855269	13-02-2014	हीरामणी ज्वैलर्स, रामकृपा बिल्डिंग, एम जी रोड, वलसाद-396001	स्वर्ण तथा स्वर्ण धातुओं के आभूषणों शिल्पकारी शुद्धता एवं मुहरांकन	1417	-	-	1999
10.	2855370	17-02-2014	हर्ष इरीगेशन प्रा. लिमिटेड, प्लॉट नंबर 2907, फेस 4, आशापुरी होटल के पास, जी आई डी सी एस्टेट, वटवा, अहमदाबाद-380050	ईरीगेशन इक्यूपमेंट- हाइड्रोसाईकलोन फिल्टर्स	14743	-	-	1999
11.	2859984	21-02-2014	शिव शक्ति बिबरेजिस, प्लॉट नंबर 865, सांतेज टाईल्स के पास, सांतेज ता. कलोल, गांधीनगर	पैकेजबंद पेयजल (अदर दैन पैकेजड नेचुरल मिनरल वाटर)	14543	-	-	2004
12.	2860161	24-02-2014	ग्रीसम इंडस्ट्रीज लिमिटेड, प्लॉट नंबर 1, जी आई डी सी एस्टेट, विलायत, भारूच-392140	पालीएल्यूमिनियम क्लोराइड	15573	-	-	2005
13.	2858073	24-02-2014	माधव प्लाय इंडस्ट्रीज, सर्वे नंबर 375/2, 3, 4, एट राउरापुरा, एन एच नंबर 8, पोस्ट समारखा, आनंद-388360	प्लाईवुड फार जनरल परपस	303	-	-	1989
14.	2858982	25-02-2014	गौरांग ज्वैलर्स, लक्ष्मी पैलेस, बैंक रोड, ऑल्ड बस स्टैंड के पास, वायरा, तापी-394650	स्वर्ण तथा स्वर्ण धातुओं के आभूषणों शिल्पकारी शुद्धता एवं मुहरांकन	1417	-	-	1999
15.	2859075	25-02-2014	श्री गायत्री ज्वैलर्स प्रा. लिमिटेड, जी-11, चिनमय टावर, गुरुकुल रोड, मेमनगर, अहमदाबाद-380052	स्वर्ण तथा स्वर्ण धातुओं के आभूषणों शिल्पकारी शुद्धता एवं मुहरांकन	1417	-	-	1999

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
16.	2859277	25-02-2014	रीमा एंटरप्राईस, कमला रोड, नाडियाड, खेडस-387001	डोमैस्टिक प्रेशर कुकर	2347	-	-	2006
17.	2859479	25-02-2014	नियो इस्पात प्रा. लिमिटेड, एट तथा पी ओ सोनासन, प्रांतिज, साबरकांटा, सोनासन-383210	हाई स्ट्रेंथ डिफामर्ड स्टील बार्स तथा वायरस फा कांक्र्रीट रेनिफोर्समेंट	1786	-	-	2008

[सं. सी एम डी/13:11]

डॉ. एस. एल. पालकर, वैज्ञानिक 'एफ' एवं प्रमुख

MINISTRY OF CONSUMER AFFAIRS, FOOD AND PUBLIC DISTRIBUTION**(Department of Consumer Affairs)****(BUREAU OF INDIAN STANDARDS)**

New Delhi, the 11th April, 2014

S.O. 1257.—In pursuance of sub-regulation (5) of Regulation 4 of the Bureau of Indian Standards (Certification) Regulations 1988, of the Bureau of Indian Standards, hereby notifies the grant of licences particulars of which are given in the following schedule :—

SCHEDULE

Sl. No.	Licences No.	Grant Date	Name and Address of the Party	Title of the Standard	IS No.	Part	Sec.	Year
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
1.	2850764	03-02-2014	Mirarbindo Engineering, Shed No. 18 to 24, Plot No. 279, Mittal Estate, Near Ujala Circle, Under Sarkhaj Rly Over Bridge, Sarkhej, Ahmedabad-382210	Safes	550	1	-	2003
2.	2850966	03-02-2014	Shahil Gold Palace, 2349, Opp. Maneknathji Mandir, Manekchock, Ahmedabad-380001	Gold and gold alloys jewellery/artefacts fineness and marking	1417	-	-	1999
3.	2850865	04-02-2014	HPT Beverages, 184, RJD Textile Park Surat-Hazira Road, Ichchhapore, Tal Chorasai, Surat-394510	Packaged drinking water (other than packaged natural mineral water)	14543	-	-	2004
4.	2851261	04-02-2014	Gopinath Jewellers, 4/345, Kansara Bajar, Dholka, Ahmedabad-387810	Gold and gold alloys jewellery/artefacts fineness and marking	1417	-	-	1999
5.	2851463	06-02-2014	Chandan Khushal Enterprise Pvt. Ltd. 317, Sahyog Industrial Estate, Post : Kareli, Tal : Palsana, Surat-394310	Covered electrodes for manual metal arc welding of carbon and carbon manganese steel	814	-	-	2004
6.	2853265	13-02-2014	Shree Bahuchar Beverages, B-73, Maruti Tenament, Nr. Bhavna School, Vastral Road, Ahmedabad-380018	Packaged drinking water (Other than packaged natural mineral water)	14543	-	-	2004

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
7.	2855067	13-02-2014	Kiran Jewellery Pvt. Ltd. 4-5-105, Govind Chakala, Station Road, Visnagar, Dist. Mehesana-384315	Gold and gold alloys, jewellery/artefacts fineness and marking	1417	-	-	1999
8.	2855168	13-02-2014	Suvarnakrupa Ornaments Private Limited, B/14, Durga Shopping Centre, Nr. Navrang School, Ambikanagar Odhav, Ahmedabad-382415	Gold and gold alloys, jewellery/artefacts fineness and marking	1417	-	-	1999
9.	2855269	13-02-2014	Hiramani Jewellers, Ram Krupa Building, M.G Raod, Valsad-396001	Gold and gold alloys, jewellery/artefacts fineness and marking	1417	-	-	1999
10.	2855370	17-02-2014	Harsh Irrigation Pvt. Ltd. Plot No. 2907, Phase 4, Near Ashapuri Hotel, GIDC Esstate, Vatva, Ahmedabad-380050	Irrigation equipment, hydrocyclone filters	14743	-	-	1999
11.	2859984	21-02-2014	Shiv Skati Beverages, Plot No. 865, Near Santej Tiles, Santej, Tal : Kalol, Gandhinagar	Packaged drinking water (Other than packaged natural mineral water)	14543	-	-	2004
12.	2860161	24-02-2014	Grsim Industries Limted, Plot No. 1, GIDC Estate, Vilayat, Bharuch-392140	Polyaluminium chloride	15573	-	-	2005
13.	2858073	24-02-2014	Madhav Ply Industries, Survey No. 375/2,3, 4, AT : Raurapura, N.H.No. 8, Post : Samarkha, Anand-388360	Plywood for general purposes	303	-	-	1989
14.	2858982	25-02-2014	Gaurang Jewellers, Laxmi Palace, Bank Road, Near Old Bus Stand, Vyara, Distt. Tapi-394650	Gold and gold alloys, jewellery/artefacts fineness and marking	1417	-	-	1999
15.	2859075	25-02-2014	Shree Gayatri Jewels Pvt. Ltd. G-11, Chinmay Tower, Gurukul Road, Memnagar, Ahmedabad-380052	Gold and gold alloys, jewellery/artefacts fineness and marking	1417	-	-	1999
16.	2859277	25-02-2014	Reema Enterprise, Kamala Road, Nadiad, Kheda-387001	Domestic pressure cookers	2347	-	-	2006
17.	2859479	25-02-2014	Neo Ispat Pvt. Ltd. AT & PO : Sonasan Prantij, Sabarkantha, Sonasan-383210	High strength deformed steel bars and wires for concrete reinforcement	1786	-	-	2008

[No. CMD/13 : 11]

Dr. S. L. PALKAR, Scientist 'F' & Head

नई दिल्ली, 11 अप्रैल, 2014

का.आ. 1258.—भारतीय मानक ब्यूरो (प्रमाणन) विनियम, 1988 के नियम 4 के उप-नियम (5) के अनुसरण में भारतीय मानक ब्यूरो एतद्वारा अधिसूचित करता है कि जिन लाइसेंसों के विवरण नीचे अनुसूची में दिए गए हैं, वे स्वीकृत कर दिए गए हैं :—

अनुसूची

क्रम सं.	लाइसेंस संख्या	स्वीकृत करने की तिथि, वर्ष/माह	लाइसेंसधारी का नाम एवं पता	भारतीय मानक का शीर्षक	भा मा संख्या	भाग	अनु	वर्ष
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
1.	2861264	05-03-2014	स्वाति ज्वैल्स 52, स्प्रिंग फिल्ड, आकाश टावर के पास जजिस बंगला रोड, वस्त्रापुर, अहमदाबाद-380054	स्वर्ण तथा स्वर्ण धातुओं के आभूषणों शिल्पकारी शुद्धता एवं मुहरांकन	1417	-	-	1999
2.	2863369	06-03-2014	श्रीजी इंजिनियरिंग एंटरप्राइसिस, 160/डी. जी आई डी सी इंडस्ट्रियल एस्टेट मकरपुरा रोड, वडोदरा-390010	हैक्सागॉन हैड बोल्ट्स, स्कूस तथा नट्स आफ प्रोडक्ट ग्रेड सी	1363	1	-	2002
3.	2863672	06-03-2014	डेजी इंडस्ट्रीज 49/1, पैकी 2, टिमबी गाँव, भलारिया मैटल के पास, वारोली ब्रीज के पास वाया संजन, वलसाद, अंबरगाँव- 396150	टैक्सटाईल्स तारपोलीन मेड फ्राम हाई डेंसिटी पालिथलीन वोवन फैबरिक	7903	-	-	2011
4.	2864674	06-03-2014	कैमेट कैमिकल्स प्रा. लिमिटेड प्लॉट नंबर- 6230/6231/6215, जी आई डी सी एस्टेट भारूच, अंकलेश्वर-393002	मालाथियन डस्टिंग पाउडर	2568	-	-	1978
5.	2864775	06-03-2014	कैमेट कैमिकल्स प्रा. लिमिटेड जी -12, हेमकूट बिल्डिंग, एल आई सी आफिस के पीछे, बी एम मैटल हैल्थ के सामने, अहमदाबाद-380006	थायरम सीड ड्रेसिंग फारमूलेशन	4783	-	-	1982
6.	2863773	07-03-2014	हरिओम वुड प्रोडक्ट्स, 18/ए-जाक इंडस्ट्रियल एरिया, गाँव जाक, पी ओ पारढोल,ता देहगाम, गांधीनगर-382325	प्लार्डवुड फार जनरल परपस	303	-	-	1989
7.	2862064	07-03-2014	गणेश वाटर सप्लाय प्लॉट नंबर 620, फेस नंबर. 4 गायगी मंदिर रोड, डी एम वे ब्रीज के पीछे, जी आई डी सी, नरोडा रोड अहमदाबाद-382345	पैकेजबंद पेयजल (अदर दैन पैकेज्ड नेचुरल मिनरल वाटर) आई एस 14543-2004	14543	-	-	2004
8.	2865272	07-03-2014	डेजी इंडस्ट्रीज 49/1, पैकी2, टिमबी गाँव, भलारिया मैटन के पास, वारोली ब्रीज के पास, वाया संजन, वलसाद, अंबरगाँव-396150	स्पेशल पुफड कैनवस तथा डक	6803	-	-	1972

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
9.	2867748	10-03-2014	जावेर प्लाई तथा बोर्ड प्रा लिमिटेड ब्लाक नंबर. 263,264,325/1, कानेरा सरसा रोड, खेडा, कानेरा-387540	बुडन फलश डोर शटर (सालिड कोर टाईप)	2202	1	-	1999
10.	2865676	11-03-2014	पूनम इंडस्ट्रीज ए/1-14, वटवा जीआईडी सी, वटवा पोस्ट आफिस रोड, फेस 2, अहमदाबाद-382445	फर्टिलाइजर तथा कैमिकल इंजेक्टर सिस्टम	14483	-	-	1997
11.	2864876	12-03-2014	आरयन एकवा जी एफ, 8बी, 9बी, 10,11, 12 एफ एफ 10, आस्था आरकडे, हिम्मतनगर मेधा रोड, रिलायेंस पेट्रोल पम्प के सामने, विजापुर मेहसाना	पैकेजबंद पेयजल (अदर दैन पैकेजड नेचुरल मिनरल वाटर)	14543	-	-	2004
12.	2864977	12-03-2014	नीलमणि ज्वैलर्स 132, धानचीनी पोल ए एम जी हवेली रोए, मानेक चौक, अहमदाबाद 380001	स्वर्ण तथा स्वर्ण धातुओं के आभूषणों शिल्पकारी शुद्धता एवं मुहरांकन	1417	-	-	1999
13.	2865979	12-03-2014	शैलेश एंटरप्राइस शैड नंबर. 33 अभिनव इंडस्ट्रियल एसटेट सुर-67,6 गिरनार स्कूटर कंपाउंड, ओढव, अहमदाबाद 382415	सिंगल फेस स्माल एसी तथा यूनिवर्सल इलैक्ट्रिक मोटर्स	996	-	-	2009
14.	2869785	12-03-2014	डिसेंट पम्पस प्लाट नंबर. 169 रोड नंबर. 4 काठवाडा जी, आई डी सी, अहमदाबाद 382430	सबमर्सिबल पम्पसैट	8034	-	-	2002
15.	2871065	12-03-2014	कैमेट कैमिकलस प्रा. लिमिटेड जी-12, हेमकूट बिल्डिंग, बी एम इंस्ट्रिच्यूट बी एम मेटल हैल्थ के सामने अहमदाबाद-380006	मालाथियन इमलसिफाएबल कंसनट्रेट	2567	-	-	1978
16.	2869886	18-03-2014	डिसेंट पम्पस प्लाट नंबर. 169, रोड नंबर. 4, काठवाडा, जी आई डी सी, अहमदाबाद 382430	ओपनवैल सबमर्सिबल पम्पसैट	14220	-	-	1994
17.	2870164	18-03-2014	कैमेट वैटस तथा फलोस प्रा लिमिटेड प्लाअ नंबर. 129/सी-2, जी आई डी सी एसटेट, अंकलेश्वर -393002	पैस्टिसाइड डायफ्यूबैनजरॉन डब्ल्यू पी	14186	-	-	1994
18.	2871570	19-03-2014	श्री गुरुकृपा बिबरेजिस शैड नंबर. 116-बी, पैकी सब प्लाट नंबर 6 भुवनेश्वरी इंडस्ट्रियल एस्टेट, न्यू जी आई डी सी, कट्टरगाम, सूरत	पैकेजबंद पेयजल (अदर दैन पैकेजड नेचुरल मिलरल वाटर)	14543	-	-	2004
19.	2865777	19-03-2014	एसट्राल पोलिटेकनिक लिमिटेड ब्लाक नंबर 1206,1210,1212, 1263,1264 सांतेज, नरमेड, रोड गाँव सांतेज, ता कलोल, गांधीनगर 382721	क्लोरीनेटिड पोलिविनायल कलोराइड सी पी वी सी पाईपस फार आटोमैटिक स्प्रिलंकलर फायर एक्सटिंगविशिंग सिस्टम	16088	-	-	2012

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
20.	2866779	19-03-2014	स्ट्रांग स्ट्रेप प्रा लिमिटेड प्लॉट नंबर. 3449, फेस 4, जी आई डी सी एस्टेट, एट छतराल, ता कलोल गांधीनगर-382729	पालियएसटर स्ट्रेपिंग	15559	-	-	2004
21.	2867377	19-03-2014	व्यास एग्रो इंडस्ट्रीज प्लॉट नंबर सी-1/672, जी आई डी सी, मकरपुरा, बडोदरा-390010	ईरीगेशन इक्यूपमेंट-हाइड्रो साइल्लोन फिल्टर	14743	-	-	1999
22.	2868076	20-03-2014	चोकसी अशोककुमार भेरूलाल, 379, दिल्ली गेट के इनसाईड, अहमदाबाद- 380001	स्वर्ण तथा स्वर्ण धातुओं के आभूषणों शिल्पकारी शुद्धता एवं मुहरांकन	1417	-	-	1999
23.	2868177	20-03-2014	आशीर्वाद ज्वैलर्स 105, सरिता काम्पलैक्स, जैन मंदिर के पास सीजी रोड, नवरंगपुरा अहमदाबाद 380009	स्वर्ण तथा स्वर्ण धातुओं के आभूषणों शिल्पकारी शुद्धता एवं मुहरांकन	1417	-	-	1999
24.	2868278	21-03-2014	अवसर पालिमर्स इंडस्ट्रीज प्लॉट नंबर. 66 67ए साबर इंडस्ट्रियल पार्क एट गाँव असल, साबरकाटा, भिलोडा-383355	अनप्लास्टिसाइड पीवीसी पाईप फार पोटेबल वाटर सपलाईस	4985	-	-	2000
25.	2869280	24-03-2014	अजय विजय तथा कम्पनी, जी/-2, रिटज स्कवेयर, इनडोर स्टेडियम के पास, गोड डोड रोड, सूरत-395007	स्वर्ण तथा स्वर्ण धातुओं के आभूषणों शिल्पकारी शुद्धता एवं मुहरांकन	1417	-	-	1999
26.	2869482	25-03-2014	सूरज स्टील रि-रोलिंग मिल एस आर 64/पी, पी ओ नवानगर, हिम्मतनगर, विजापुर हाईवे, नवानगर बस स्टाप के पास, साबरकांटा, हिम्मतनगर-383220	हाई स्ट्रेंथ डिफामर्ड स्टील बार्स तथा वायरस फार कांक्रीट रेनिफोर्समेंट	1786	-	-	2008
27.	2869583	25-03-2014	सुवर्णा माहोर जी-14 कर्णावती अपार्टमेंट जोधपुर गाम रोड अहमदाबाद-380015	स्वर्ण तथा स्वर्ण धातुओं के आभूषणों शिल्पकारी शुद्धता एवं मुहरांकन	1417	-	-	1999
28.	2869684	25-03-2014	रोयल गोल्ड 4, अपर लैवल सफायर काम्पलैक्स, कारगो मोटर्स के पास, सी जी रोड अहमदाबाद 380009	स्वर्ण तथा स्वर्ण धातुओं के आभूषणों शिल्पकारी शुद्धता एवं मुहरांकन	1417	-	-	1999
29.	2870366	25-03-2014	बंसी इंडस्ट्रीज प्लॉट नंबर. 227/4, जी आई डी सी, पानोनी, भारुच, अंकलेश्वर	अनप्लास्टिसाइड पीवीसी पाईप फार पोटेबल वाटर सपलाईस	4985	-	-	2000
30.	2870265	25-03-2014	वि शाखा इरीगेशन प्रा लिमिटेड ब्लाक नंबर 792/4बी, 2बी, 2सी-3 मोनिक इंडस्ट्रीज के पास, सरसपुर रोड, गाँव मोती बोयन, ता कलोल, गांधीनगर-382721	पालीथलीन पाईप फार सपलाई आफ गैसियस फयूलस	14885	-	-	2001

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
31.	2870467	26-03-2014	एस एस ज्वैलर्स 5/1019/20, तारातिया हनुमान शेरी हरीपुरा, सूरत-395003	स्वर्ण तथा स्वर्ण धातुओं के आभूषणों शिल्पकारी शुद्धता एवं मुहरांकन	1417	-	-	1999

[सं. सी एम डी/13:11]

डॉ. एस. एल. पालकर, वैज्ञानिक 'एफ' एवं प्रमुख

New Delhi, the 11th April, 2014

S.O. 1258.—In pursuance of sub-regulation (5) of Regulation 4 of the Bureau of Indian Standards (Certification) Regulations 1988, of the Bureau of Indian Standards, hereby notifies the grant of licences particulars of which are given in the following schedule :—

SCHEDULE

Sl. No.	Licences No.	Grant Date	Name and Address of the Party	Title of the Standard	IS No.	Part	Sec.	Year
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
1.	2861264	05-03-2014	Sweati Jewellers 52, Spring Field, Near Akash Tower, Judges Bungalow Road, Vastrapur, Ahmedabad 380054	Gold and gold alloys jewellery/artefacts fineness and marking	1417	1	-	1999
2.	2863369	06-03-2014	Shriji Engineering Enterprises 160/D. GIDC Industrial Estate Makarpura Road. Vadodara 390010	Hexagon head bolts, screws and nuts of product grade 'c'	1363	1	-	2002
3.	2863672	06-03-2014	Daisy Industries 49/1, Paiki 2, Timbhi Village Near Bhallaria Metal, Close To Varoli Bridge, Via Sanjan valsad Umbergaon-396150	Textiles-tarpaulins made from high density polyethylene woven fabric	7903	-	-	2011
4.	2864674	06-03-2014	Chemet Chemicals Pvt. Ltd. Plot No. 6230/6231/6215, GIDC Estate Bharuch, Ankleshwar-393002	Malathion dusting Powders	2568	-	-	1978
5.	2864775	06-03-2014	Chemet Chemicals Pvt. Ltd. G-12, Hemkoot Building Behind LIC Office Opp. B. M. Mental Health, Ahmedabad-380006	Thiram Seed dressing formulations	4783	-	-	1982
6.	2863773	07-03-2014	Hariom Wood Products 18/A-ZAK Industrial Area Vill. ZAK P.O. Pardhal, Tal : Dehgam Gandhinagar-382325	Plywood for general purpose	303	-	-	1989
7.	2862064	07-03-2014	Ganesh Water Supply Plot No. 620, Phase No. 4 Gayatri Mandir Road, Behind DM way Bridge, GIDC, Naroda Road, Ahmedabad-382345	Packaged drinking water (Other than packaged natural mineral water)	14543	-	-	2004

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
8.	2865272	07-03-2014	Daisy Industries 49/1, Paik 2, Timbhi Village, Near Bhallaria Metal Close To Varoli Bridge, VIA : Sanjan, Umergaon, Valsad Umergaon- 396150	Special proofed canas and duck	6803	-	-	1972
9.	2867748	10-03-2014	Zaver Ply & Boards Pvt. Ltd. Block No. 263, 264, 325/1, Kanera-Sarsa Road Kheda, Kanera -387540	Wooden Flush door shutters (solid core type)	2202	1	-	1999
10.	2865676	11-03-2014	Poonam Industries A/1-14, Vatva GIDC, Vatva post Office Road, Phase II Ahmedabad- 382445	Fertilizer and chemical injector system	14483	1	-	1997
11.	2864876	12-03-2014	Aryan Aqua GF. 8B, 9B, 10, 11, 12 FF. 10, Astha Arcade Hemmatnagar- Medhana Raod, Opp. Reliance Petrol Pump, Vijapur Mahesana	Packaged drinking water (Other than packaged natural minmral water)	14543	-	-	2004
12.	2864977	12-03-2014	Nilmani Jewellers 132, Ghanchini Pole, M. G. Haveli Road Manekchowk, Ahmedabad-380001	Gold and gold alloys, Jewellery/artefacts fineness and Marking	1417	-	-	1999
13.	2865979	12-03-2014	Shailesh Enterprise Shed No. 22, Abhinav Ind. Estate Sur-67, 6 Girnar Scooter Compound, Odhav, Ahmadabad-382415	Single-phase small ac and universal electric motors	996	-	-	2009
14.	2869785	12-03-2014	Decent Pumps Plot No. 169, Road No. 4 Kathwada GIDC, Ahmedabad 382430	Submersible Pumpsets	8034	-	-	2002
15.	2871065	12-03-2014	Chemets Wets & Flows Pvt. Ltd. G-12, Hemkoot Building, Opp. B. M. Institute, of Mental Health, Ellisbridge, Ashram Road, Ahmedabad 380009	Malathion emulsifiable concentrates	2567	-	-	1978
16.	2869886	18-03-2014	Decent Pumps Plot No. 169, Road No. 4 Kathwada GIDC Ahmedabad 382430	Openwell Submersible Pumpsets	14220	-	-	1994
17.	2870164	18-03-2014	Chemets Wets & Flows Pvt. Ltd. Plot No. 129/C-2, GIDC Estate, Ankleshwar 393002	Pesticide -diflubenzuron wp	14186	-	-	1994

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
18.	2871570	19-03-2014	Shree Gurukrupa Beverages Shed No. 116 -B Paiki sub Plot Plot No. 6 Bhuvneshwari Industrial Estate New GIDC Katargam, Surat	Packaged drinking water (Other than packaged natural mineral water)	14543	-	-	2004
19.	2865777	19-03-2014	Astral Polytechnik Limited Block No. 1206, 12101212, 1263, 1264, Santej Narmed Road Village Santej, Taluka Kalol, Gandhi Nagar 38 272	Chlorinated Polyvinyl chloride (cpvc) pipes for automatic sprinkler fire extinguishing system	16088	-	-	2012
20.	2855067	19-03-2014	Strong Strap Pvt. Ltd. Plot No. 3449, Phase IV GIDC Estate, at Chhatral Tal,- Kalol Gandhinagar 382729	Polyester strapping	15559	-	-	2004
21.	2867377	19-03-2014	Vyas Agro Industries Plot No. C-1/672, GIDC Makarpura, Vadodara 390010	Irrigation equipment hydrocyclone filters	14743	-	-	1999
22.	2868076	20-03-2014	Choksi Ashokkumar Bherualal 379, Inside Delhi Gate, Ahmedabad 380001	Gold and gold alloys, jewellery/ artefacts- fineness and marking	1417	-	-	1999
23.	2868177	20-03-2014	Aashiirvad Jewellers 105, Sarita Complex, Near Jain Temple, C.G Road, Nav- rangpura. Ahmedabad-380009	Gold and gold alloys, jewellery/ artefacts- fineness and marking	1417	-	-	1999
24.	2868278	21-03-2014	Avsar Polymers Industries Plot No. 66 & 67, Sabar Industrial Park At: Village : Asal Sabarkantha, Bhiloda-383355	Unplasticized pvc pipes for potable water supplies	4985	-	-	2000
25.	2869280	21-03-2014	Ahay Vijay & CO. G/1-2 Rittz Square, Near Indoor Stadium, Ghod-Dod, Road Surat. 395007	Gold and gold alloys jewellery/artefacts fineness and marking	1417	-	-	1999
26.	2869482	25-03-2014	Suraj Steel Re-Rolling Mill S.R. 64/P, P. O. Navanagar, Himatnagar Vijapur Highway, NR Navanagar Bus Stop, Sabarkantha, Himatnagar- 383220	High Strength deformed steel bars and wires for concrete reinforcement	1786	-	-	2008
27.	2869583	25-03-2014	Suvarna Mahor G-14, Karnavati Appartment, Jodhpur Gam Road Ahmedabad 380015	Gold and gold alloys, jewellery/artefacts fineness and marking	1417	-	-	1999

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
28.	2869684	25-03-2014	Royal Gold 4, Upper Level Sapphire Complex Near Cargo Motors. C.G. Road, Ahmedabad-380009	Gold and gold alloys, jewellery/artefacts fineness and marking	1417	-	-	1999
29.	2870366	25-03-2014	Bansi Industries Plot No. 227/4, GIDC, At Panoli Bharuch, Ankleshwar	Unplasticized pvc pipes for potable water supplies	4985	-	-	2000
30.	2870265	25-03-2014	Vishkha Irrigation Pvt. Ltd. Block No. 792/4B, 2B, 2C-3, Near Monic Industries Sabasapur Road, Village Moti Bhoyan, Taluka Kalol. Gandhinagar-382721	Polyethylene pipes for the Supply of gaseous fuels	14885	-	-	2001
31.	2870467	26-03-2014	S S Jewellers 5/1019/20, Taratiya Hanuman Sheri, Haripura. Surat- 395003	Gold and gold alloys, jewellery/ artefacts- fineness and marking	1417	-	-	1999

[No. CMD/13 : 11]

Dr. S. L. PALKAR, Scientist 'F' & Head

नई दिल्ली, 11 अप्रैल, 2014

का.आ. 1259 .—भारतीय मानक ब्यूरो (प्रमाणन) विनियम, 1988 के विनियम (5) के उप-नियम (6) के अनुसरण में भारतीय मानक ब्यूरो एतद्वारा अधिसूचित करता है कि निम्न विवरण वाले लाइसेंसों को उनके आगे दर्शायी गई तारीख से रद्द/स्थगित कर दिया गया है :—

अनुसूची

क्रम सं.	लाइसेंस संख्या सीएम/एल—	लाइसेंसधारी का नाम एवं पता	लाइसेंस के अंतर्गत वस्तु/प्रक्रम सम्बद्ध भारतीय मानक का शीर्षक	रद्द करने की तिथि
कोई नहीं				

[सं. सी एम डी 13:13]

डॉ. एस. एल. पालकर, वैज्ञानिक 'एफ' एवं प्रमुख

New Delhi, the 11th April, 2014

S.O. 1259 .—In pursuance of sub-regulation (6) of Regulation (5) of the Bureau of Indian Standards (Certification) Regulations 1988, of the Bureau of Indian Standards, hereby notifies that the licences particulars of which are given below have been cancelled with effect from the date indicated against each :—

SCHEDULE

Sl. No.	Licences No. CM/L-.	Name & Address of the Licensee	Article/Process with relevant Indian Standards covered by the licence cancelled	Date of Cancellation
Nil				

[No. CMD/13:13]

Dr. S. L. PALKAR, SCIENTIST 'F' & Head

नई दिल्ली, 11 अप्रैल, 2014

का.आ. 1260 .—भारतीय मानक ब्यूरो (प्रमाणन) विनियम, 1988 के विनियम (5) के उप-नियम (6) के अनुसरण में भारतीय मानक ब्यूरो एतद्वारा अधिसूचित करता है कि निम्न विवरण वाले लाइसेंसों को उनके आगे दर्शायी गई तारीख से रद्द/स्थगित कर दिया गया है :—

अनुसूची

क्रम सं.	लाइसेंस संख्या सीएम/एल	लाइसेंसधारी का नाम एवं पता	लाइसेंस के अंतर्गत वस्तु/प्रकम सम्बद्ध भारतीय मानक का शीर्षक	रद्द करने की तिथि
1	3827471	प्योर केयर बिवरेजिस सी/13-15, हार्दिक पार्क, नागारा कैम्बे रोड, डिस्ट्रिक्ट आनंद-388620	पैकेजबंद पेयजल (अदर दैन पैकजड नेचुरल मिनरल वाटर) आई एस 14543-2004	20/03/2014

[सं. सी एम डी/13:13]

डॉ. एस. एल. पालकर, वैज्ञानिक एफ एवं प्रमुख

New Delhi, the 11th April, 2014

S.O. 1260 .—In pursuance of sub-regulation (6) of Regulation (5) of the Bureau of Indian Standards (Certification) Regulations 1988, of the Bureau of Indian Standards, hereby notifies that the licences particulars of which are given below have been cancelled with effect from the date indicated against each :—

SCHEDULE

Sl. No.	Licences No. CM/L-	Name & Address of the Licensee	Article/Process with relevant Indian Standards covered by the licence cancelled	Date of Cancellation
1	3827471	M/s. Pure care Beverages C/13-15, Hardik Park, Nagara Cambay Road, Cambay Distt: Anand- 388620	Packaged drinking water (other than Packaged natural mineral water) IS 14543: 2004	20/03/2014

[No. CMD/13:13]

Dr. S. L. PALKAR, Scientist 'F' & Head

नई दिल्ली, 21 अप्रैल, 2014

का.आ. 1261 .—भारतीय मानक ब्यूरो (प्रमाणन) विनियम, 1988 के विनियम 4 के उप-नियम (5) के अनुसरण में भारतीय मानक ब्यूरो एतद्वारा अधिसूचित करता है कि जिन लाइसेंसों के विवरण नीचे अनुसूची में दिए गए हैं, वे स्वीकृत कर दिए गए हैं :—

अनुसूची

क्र सं.	लाइसेंस सं.	स्वीकृत करने की तिथि वर्ष/माह	लाइसेंसधारी का नाम व पता	भारतीय मानक का शीर्षक	भा. मा. सं (भाग/ अनुभाग वर्ष)
(1)	(2)	(3)	(4)	(5)	(6)
1	4711457	20140311	मैसर्स रवि हाईटेक पम्पस 6/35, न्यू दामू नगर, पुलियाकुलम रोड, कोयम्बतूर-641037	कृषि एवं जल आपूर्ति के लिए बिजली के मोनोसेट पम्पस	आई एस 9079:2002

2	4712358	20140311	मेसर्स एस जे एक्वा इंडस्ट्रीस 75-बी, अप्पीची नगर मुख्य सड़क, कोन्गु नगर, तिरुप्पुर-641607	पैकेजबंद पेय जल (पैकेजबंद मिनरल जल के अलावा)	आई एस 14543:2004
3	4717772	20140325	मेसर्स एमराल्ड ज्वेलरी रीटेइल सं. 24, ढाली रोड, उडुमलपेट-641126 तिरुप्पुर (जिला)	स्वर्ण एवं स्वर्ण मिश्रधातुएं आभूषण/ शिल्पकारी-शुद्धता एवं मुहरांकन	आई एस 1417:1999

[सं. सीएम डी/13:11]

एम. सदाशिव, वैज्ञानिक 'एफ' एवं प्रमुख

New Delhi, the 21st April, 2014

S.O. 1261 .—In pursuance of sub-regulation (5) of Regulation 4 of the Bureau of Indian Standards (Certification) Regulations 1988, of the Bureau of Indian Standards, hereby notifies particulars of which are given in the following schedule :—

SCHEDULE

Sl. No.	Licence No.	Grant Date	Name & Address (Factory) of the Party	Title of the Standard	IS No. Part/ Sec. Year
1	4711457	20140311	M/s.Ravi Hitech Pumps 6/35, New Damu Nagar, Puliakulam Road, Commabatore- 641037.	Electric Monoset Pumps for Clear, Cold Water for Agricultural and Water Supply Purposes	IS 9079 : 2002
2	4712358	20140311	M/s.S.J. Aqua Industries 75-B, Appachi Nagar Main Road, Kongu Nagar Tiruppur- 641607.	Packaged Drinking Water (other than Packaged Natural Mineral Water)	IS 14543 : 2004
3	4717772	20140325	M/s.Emerald Jewellery Retain Limited No. 24, Dhali Road, Udumalpet 641 126. Tiruppur (District)	Gold and Gold Alloys, Jewellery/Artefacts Fineness and Marking	IS 1417 : 1999

[No. CMD/13:11]

M. SADASIVAM, Scientist 'F' & Head

संस्कृति मंत्रालय

नई दिल्ली, 16 अप्रैल, 2014

का.आ. 1262 .—केन्द्र सरकार, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग)नियम, 1976 के नियम 10 के उप-नियम (4) के अनुसरण में संस्कृति मंत्रालय के अंतर्गत आने वाले कार्यालय राष्ट्रीय संग्रहालय संस्थान, कला इतिहास, संरक्षण एवं संग्रहालय विज्ञान, नई दिल्ली को जिसमें 80% से अधिक कर्मचारियों ने हिंदी का कार्यसाधक ज्ञान प्राप्त कर लिया है, अधिसूचित करती है :—

यह अधिसूचना राजपत्र में प्रकाशन की तारीख से प्रवृत्त होगी।

[फा. सं. 13016/1/2011-हिंदी]

श्रेया गुहा, संयुक्त सचिव

MINISTRY OF CULTURE

New Delhi, the 16th April, 2014

S.O. 1262 .—In pursuance of sub-rule (4) of Rule 10 of the Official Language (Use for official purposes of the Union) Rules, 1976 the Central Govt. hereby notifies the Office of National Museum Institute, History of Art, Conservation and Museology, New Delhi under Ministry of Culture wherein more than 80% staff have acquired working knowledge of Hindi.

This notification shall come into force from the date of publication in the Official Gazette.

[F.No. 13016/1/2011-Hindi]

SREYA GUHA, Jt. Secy.

नई दिल्ली, 16 अप्रैल, 2014

का.आ. 1263 .—केन्द्र सरकार, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग)नियम, 1976 के नियम 10 के उप-नियम (4) के अनुसरण में संस्कृति मंत्रालय के अंतर्गत आने वाले कार्यालय राष्ट्रीय संग्रहालय संस्थान कला इतिहास, संरक्षण एवं संग्रहालय विज्ञान, नई दिल्ली को जिसमें 80% से अधिक कर्मचारियों ने हिंदी का कार्यसाधक ज्ञान प्राप्त कर लिया है, अधिसूचित करती है :—

यह अधिसूचना राजपत्र में प्रकाशन की तारीख से प्रवृत्त होगी।

[फा. सं. 13016/1/2011-हिंदी]

श्रेया गुहा, संयुक्त सचिव

New Delhi, the 16th April, 2014

S.O. 1263 .—In pursuance of sub-rule (4) of Rule 10 of the Official Language (Use for official purposes of the Union) Rules, 1976 the Central Govt. hereby notifies the Office of National Museum Institute, History of Art, Conservation and Museology, New Delhi under Ministry of Culture wherein more than 80% staff have acquired working knowledge of Hindi.

This notification shall come into force from the date of publication in the Official Gazette.

[F. No. 13016/1/2011-Hindi]

SREYA GUHA, Jt. Secy.

नई दिल्ली, 15 अप्रैल, 2014

का.आ. 1264.—केन्द्र सरकार, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग)नियम, 1976 के नियम 10 के उप-नियम (4) के अनुसरण में संस्कृति मंत्रालय के अंतर्गत आने वाले कार्यालय राष्ट्रीय संग्रहालय संस्थान, कला इतिहास, संरक्षण एवं संग्रहालय विज्ञान, नई दिल्ली को जिसमें 80% से अधिक कर्मचारियों ने हिंदी का कार्यसाधक ज्ञान प्राप्त कर लिया है, अधिसूचित करती है :—

यह अधिसूचना राजपत्र में प्रकाशन की तारीख से प्रवृत्त होगी।

[फा. सं. 13016/1/2011-हिंदी]

श्रेया गुहा, संयुक्त सचिव

New Delhi, the 15th April, 2014

S.O. 1264.—In pursuance of sub-rule (4) of Rule 10 of the Official Language (Use for official purposes of the Union) Rules, 1976 the Central Govt. hereby notifies the Office of National Museum Institute, History of Art, Conservation and Museology, New Delhi under Ministry of Culture wherein more than 80% staff have acquired working knowledge of Hindi.

This notification shall come into force from the date of publication in the Official Gazette.

[F. No. 13016/1/2011-Hindi]

SREYA GUHA, Jt. Secy.

नई दिल्ली, 15 अप्रैल, 2014

का.आ. 1265.—केन्द्र सरकार, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग)नियम, 1976 के नियम 10 के उप-नियम (4) के अनुसरण में संस्कृति मंत्रालय के अंतर्गत आने वाले कार्यालय केन्द्रीय तिब्बती अध्ययन विश्वविद्यालय, सारनाथ, वाराणसी को जिसमें 80% से अधिक कर्मचारियों ने हिंदी का कार्यसाधक ज्ञान प्राप्त कर लिया है, अधिसूचित करती है।

यह अधिसूचना राजपत्र में प्रकाशन की तारीख से प्रवृत्त होगी।

[फा. सं. 13016/1/2011-हिंदी]

श्रेया गुहा, संयुक्त सचिव

New Delhi, the 15th April, 2014

S.O. 1265.—In pursuance of sub-rule (4) of Rule 10 of the Official Language (Use for official purposes of the Union) Rules, 1976 the Central Govt. hereby notifies the Office of Kendriya Tibbati Adhyayan Vishwavidyalaya, Sarnath, Varanasi under Ministry of Culture wherein more than 80% staff have acquired working knowledge of Hindi.

This notification shall come into force from the date of publication in the Official Gazette.

[F. No. 13016/1/2011-Hindi]

SREYA GUHA, Jt. Secy.

नागर विमानन मंत्रालय

(एएआई अनुभाग)

नई दिल्ली, 24 मार्च, 2014

का.आ. 1266.—भारतीय विमानपत्तन प्राधिकार अधिनियम, 1994 (1994 का संख्या 55)के खण्ड-3 में अंतर्विष्ट शक्तियों का प्रयोग करते हुए केन्द्र सरकार, एतद्वारा तत्काल प्रभाव से श्री एस. मचेन्द्रनाथन, भूतपूर्व एस एस एण्ड एफए, नागर विमानन मंत्रालय के स्थान पर सुश्री एम. सत्यवती, अपर सचिव एवं वित्त सलाहकार, नागर विमानन मंत्रालय को भारतीय विमानपत्तन प्राधिकरण बोर्ड में अंशकालीन सदस्य के रूप में नियुक्त करती है।

[फा. सं. एवी-24015/5/2013-एएआई]

सैयद इमरान अहमद, अवर सचिव

MINISTRY OF CIVIL AVIATION

(AAI Section)

New Delhi, the 24th March, 2014

S.O. 1266.—In exercise of the powers conferred under Section 3 of the Airports Authority of India Act, 1994 (No. 55 of 1994) the Central Government hereby appoints Ms. M. Sathiyavathy, Additional Secretary and Financial Adviser in the Ministry of Civil Aviation, as part-time Member on the Board of Airports Authority of India vice Shri S.Machendranath, former SS&FA, Ministry of Civil Aviation, with immediate effect.

[F. No. AV- 24015/5/2011-AAI]

SYED IMRAN AHMED, Under Secy.

श्रम एवं रोजगार मंत्रालय

नई दिल्ली, 9 अप्रैल, 2014

का.आ. 1267 .—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार वेस्टर्न कोलफील्ड्स लिमिटेड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 56/2007) को प्रकाशित करती है जो केन्द्रीय सरकार को 09/04/2014 को प्राप्त हुआ था।

[सं. एल-22012/220/2007-आईआर (सीएम-II)]

बी. एम. पटनायक, डेस्क अधिकारी

MINISTRY OF LABOUR AND EMPLOYMENT

New Delhi, the 9th April, 2014

S.O. 1267.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 56/2007) of the Central Government Industrial Tribunal-cum-Labour Court, Nagpur now as shown in the Annexure in the Industrial Dispute between the management of Durgapur O/C. Mine of Western Coalfields Ltd., and their workmen, which was received by the Central Government on 09/04/2014.

[No. L-22012/220/2007-IR (CM-II)]

B. M. PATNAIK, Desk Officer

ANNEXURE**BEFORE SHRI J. P. CHAND, PRESIDING OFFICER,
CGIT-CUM-LABOUR COURT, NAGPUR****Case No. CGIT/NGP/56/2007**

Date: 24.03.2014

Party No. 1 : The Sub Area Manager,
Durgapur O/C. Mine of WCL,
Post: Durgapur,
Distt. Chandrapur (MS)

Versus

Party No. 2 : The President,
Koyala Shramik Sabha (HMS)
Post: Durgapur,
Distt. Chandrapur (MS)

AWARD

(24th March 2014)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the

management of WCL and their workman, Shri P.S. Tiwari, for adjudication, as per letter No.L-22012/220/2007-IR (CM-II) dated 26.09.2007, with the following schedule:-

"Whether the action of the management of M/s. WCL in dismissing the services of Shri P.S. Tiwari w.e.f. 31.03.2006 is legal and justified? If not, to what relief is the workman entitled?"

2. On receipt of the reference, parties were noticed to file their respective statement of claim and written statement, in response to which, the workman, Shri P.S. Tiwari, ("the workman" in short) filed the statement of claim and the management of WCL, ("party no.1" in short) filed the written statement.

The case of the workman as projected in the statement of claim is that he was appointed as a Mazdoor category-I on 21.09.1986 and looking to his good hard work and clean and unblemished record, he was given promotion and lastly he was promoted as a driver of upgraded category-VI w.e.f. 01.01.2004 and on 08.11.2005, the patrolling team of the management had caught hold up some persons alongwith two vehicles on the allegations of committing theft of diesel and the patrolling team also found two drums and three canes containing approximately 500 liters' of diesel from the spot and it was alleged that those persons carrying the said diesel unauthorisedly and illegally and it was alleged by party no.1 that he (workman) was also involved in the theft of diesel and such allegations were altogether baseless, false and frivolous and he was not involved in such illegal act or crime and only on the basis of the alleged statement made by the accused persons of the said crime, charge sheet no. 1808 dated 12.11.2005 under clauses 26.1 and 26.11 of the Standing Order was submitted against him and he submitted his reply to the charge sheet by his letter dated 15.11.2005 with a request to provide all the relevant and necessary documents, but the said documents were neither supplied to him nor he was given any further opportunity to give further reply and party no.1 without considering his reply dated 15.11.2005, directed to make enquiry against him and the enquiry officer so appointed was none other than one of the employees of party no.1 and party No.1 ought to have appointed an independent and impartial person to conduct the enquiry and though seven witnesses were examined by the management, none of them was an eye witness and the evidence of the said witnesses was hearsay evidence and there were major contradictions and omissions in the statement of the witnesses and party no.1 failed to examine the important, necessary and vital witnesses and he was not afforded an opportunity to bring the real facts before the enquiry officer and the enquiry was conducted in a biased manner, without following the principles of natural justice and fair play and even though, the major contradictions, omissions and the manipulation in the official record were brought to

the notice of the enquiry officer, he deliberately over looked the same, with an ulterior motive and the Enquiry Officer submitted his enquiry report, which is altogether illegal, perverse, malafide, bad in law and without application of mind and vide letter dated 07.03.2006, he was called upon to show cause and submit his written explanation to the enquiry report and he submitted his reply to the same and without taking his reply into consideration, the party no.1 issued the order of dismissal from services on 31.03.2006 with immediate effect and the said order passed by the authority is bad in law, illegal, without application of mind, perverse and contrary to the settled judicial precedents.

It is further pleaded by the workman that the criminal prosecution initiated against him is pending and as such, the party No.1 would not have proceed with the departmental enquiry and order of punishment of dismissal from services is excessive and as such, the same is liable to be set aside.

The workman has prayed for his reinstatement in service with continuity, full back wages and all consequential benefits.

3. Party No.1 in the written statement has pleaded inter-alia that the workman was appointed as general mazdoor w.e.f. 21.09.1986 and subsequently, he was promoted/ re-designated as operator Excavation. Cat. D and Cat. C w.e.f. 01.04.1988 and 30.05.1989 respectively and he was further converted/re-designated as driver cat.-V from 10.06.1995 and to cat.-VI from 01.01.2004 and the action of dismissal from service of the workman was the outcome of the disciplinary action initiated against him and on 08.11.2005, the workman was on duty in general shift on diesel browser bearing no. MH 34-A-3507 and it was reported to the management that as per instructions, the workman alongwith two helpers filled the diesel in the field machines and brought back the diesel browser at about 1.45 PM and parked the same near the store, Durgapur OCM and again at 4.025 PM, the workman alone took the diesel browser, without any helper or without any permission from superior officials and the security personnel found the workman coming from ANFO Shed road driving the diesel browser, in a high speed and as the security personnel also found some outside vehicles following the diesel browser, on doubt, the patrolling team chased the outside vehicle and got hold of the same at nearby sub-station and found that there were two drums and 3 canes on the said vehicle, which was filled with about 500 liters of diesel, so, the patrolling party seized the outside Tata Seira vehicle and on interrogation by the patrolling party, it was revealed that the workman sold the diesel to the private unauthorized persons by taking out the diesel from the diesel browser of the company and it was therefore decided to initiate disciplinary action against the workman by issuing charge sheet under the provisions of the Standing Orders.

The further case of the party No.1 is that the workman was issued with the charge sheet dated 12.11.2005 and one Shri Ram Deo Rao, Personnel Manager, (IR) was appointed as the enquiry officer and after due intimation, the enquiry officer conducted the enquiry on various dates and in the departmental enquiry, the workman was allowed to be defended by his co-worker and copies of documents, which were relied upon by the management to substantiate the charges were supplied to the workman and the workman was allowed to cross-examine the witnesses examined by the management and he was also given the opportunity to adduce defence evidence and the workman examined himself in his defence and the enquiry was closed on 14.01.2006 with the consent of both the parties and every opportunity to defend the case was given to the workman and copies of the enquiry proceeding were supplied to the workman and the enquiry officer submitted a detailed report after analyzing the evidence adduced before him by the parties and copy of the enquiry report was given to the workman and he was offered the opportunity to submit his say and the findings submitted by the enquiry officer are based on the evidence recorded during the course of the enquiry and the disciplinary authority accepted the findings of the enquiry officer and after taking into consideration the seriousness and gravity of the charges, passed the order of punishment of dismissal from services against the workman w.e.f. 31.03.2006 and the appeal preferred by the workman against the order of punishment was also dismissed by the appellate authority.

The further case of the party No.1 is that as the workman was involved in the case of theft, a police report came to be made against him in the appropriate police station and criminal trials and departmental enquiry are based on different footing and for different purposes and there is no bar for the management to initiate disciplinary proceeding for the misconduct committed by the workman and the order of punishment passed against the workman is fair and judicious and he is not entitled to any relief.

4. As this is a case of dismissal of the workman after holding of a departmental inquiry, the legality or otherwise of the departmental enquiry was taken for consideration as a preliminary enquiry and by order dated 02.09.2013, the departmental enquiry conducted against the workman was held to be legal, proper and in accordance with the principles of natural justice.

5. At the time of argument, it was submitted by the Learned Advocate for the workman that the Enquiry Officer appointed by the party No.1 to conduct the enquiry against the workman was none other than one of the employees of the management and party No.1 ought to have appointed an independent and impartial person to conduct the enquiry and the findings of the Inquiry Officer are perverse, as because none of the seven witnesses examined in the enquiry was an eye witness and the evidence of the

witnesses is hearsay evidence and there are major contradictions and omissions in the evidence of the witnesses and material witnesses were not examined and the inquiry officer was biased and the report submitted by the enquiry officer is illegal, perverse and malafide and it is clear from the evidence on record that the alleged stolen diesel was not recovered or seized from the possession of the workman and according to the own case of the party No.1, there was seizure of 500 liters of diesel from some outsiders, where as there was shortage of 362 liters of diesel in the diesel browser, which was alleged to be driven by the workman, so, the findings of the Inquiry Officer that the charges have been proved against the workman cannot be said to be based on evidence on record and the Disciplinary Authority did not consider the written explanation submitted by the workman to the show cause notice, so the punishment imposed against the workman is illegal and contrary to the judicial precedents and the punishment imposed is shockingly disproportionate. It was also submitted by the Learned Advocate for the workman that a criminal prosecution was sub-judiced against the workman basing on the same allegations as made in the charge sheet issued in the departmental inquiry, so, the party No.1 should not have proceeded with the departmental inquiry, which was ultimately resulted into perversity and illegality and the punishment imposed against the workman is liable to be set aside and the workman is entitled for reinstatement in service with continuity, full back wages and all other consequential benefits.

6. Per contra, it was submitted by the Learned Advocate for the party No.1 that it has already been held that the departmental enquiry conducted against the workman was fair and proper by order dated 02.09.2013 and there is only sweeping allegation regarding the perversity of findings in the rejoinder without any specific instances and therefore, such sweeping allegation cannot be accepted and the findings of the enquiry officer are based on the documents filed and evidence led in the enquiry and the enquiry officer has given a rational and objective report and he has not relied on any extraneous material and the report is also not contrary or opposed to the evidence and the report is also not such, which no reasonable person could have arrived at and as such, the findings of the enquiry officer cannot be said to be perverse. It was further submitted by the Learned Advocate for the management that the allegation of bias against the enquiry officer has not been substantiated and as such, such submission cannot be accepted and commission of serious misconducts has been proved against the workman in a properly conducted departmental enquiry and as such, the punishment imposed against the workman cannot be said to be disproportionate to the charges proved and as such, there is no scope to interfere with the punishment.

7. In view of the submissions made by the Learned Advocate for the parties, I think it proper to mention about the principles enunciated by the Hon'ble Apex Court regarding the jurisdiction of the Tribunal to interfere with punishment awarded by competent authority in departmental proceedings.

It is settled beyond doubt by the Hon'ble Apex Court in a chain of decisions that interference with the finding of fact is permissible only when there is no material for the said conclusion or that on the materials, the conclusion cannot be that of a reasonable man and a finding recorded in a domestic enquiry cannot be characterised as perverse by the Labour Court unless it can be shown that such a finding is not supported by any evidence, or is entirely opposed to the whole body of evidence adduced. In a domestic enquiry once a conclusion is deduced from the evidence, it is not permissible to assail that conclusion even though it is possible for some other authority to arrive at a different conclusion on the same evidence.

It is also settled by the Hon'ble Apex Court that in a case where there is no defect in procedure in the course of domestic enquiry into the charges for misconduct against an employee, the Tribunal can interfere with an order of dismissal where the findings are perverse or there is no prima facie case and in such a case, the Tribunal does not sit as a court of appeal, weighing or re-appreciating the evidence for itself, but examines the finding of the enquiry officer on the evidence in the domestic enquiry as it is and where there is no failure of the principles of natural justice in the course of domestic enquiry, if the Tribunal finds that dismissal of an employee is by way of victimization or unfair labour practice, it will then have complete jurisdiction to interfere with the order of dismissal passed in the domestic enquiry. In that event, the fact that there is no violation of the principles of natural justice in the course of domestic enquiry will absolutely lose its importance or efficacy. Whether and under what facts and circumstances a Tribunal will accept the plea of victimization against the employer will depend upon the judicial discretion.

It is also settled by the Hon'ble Apex Court that, "the disciplinary authority is the sole judge of facts and in case an appeal is presented to the appellate authority, the appellate authority has also the power/and jurisdiction to re-appreciate the evidence and come to its own conclusion, on facts, being the sole fact-finding authorities. Once findings of fact, based on appreciation of evidence are recorded, the High Court in writ jurisdiction may not normally interfere with those factual findings unless it finds that the recorded findings were based either on no evidence or that the findings were wholly perverse and/or legally untenable. The adequacy or inadequacy of the evidence is not permitted to be canvassed before the High Court. Since the High Court does not sit as an appellate

authority over the factual findings recorded during departmental proceedings, while exercising the power of judicial review, the High Court cannot, normally speaking, substitute its own conclusion, with regard to the guilt of the delinquent, for that of the departmental authorities. Even insofar as imposition of penalty or punishment is concerned, unless the punishment or penalty imposed by the disciplinary or the departmental appellate authority, is either impermissible or such that it shocks the conscience of the High Court, it should not normally substitute its own opinion and impose some other punishment or penalty. Both the Learned Single Judge and the Division Bench of the High Court, it appears, ignored the well-settled principle that even though judicial review of administrative action must remain flexible and its dimension not closed, yet the Court, in exercise of the power of judicial review, is not concerned with the correctness of the findings of fact on the basis of which the orders are made so long as those findings are reasonably supported by evidence and have been arrived at through proceedings which cannot be faulted with for procedural illegalities or irregularities which vitiate the process by which the decision was arrived at. Judicial review, it must be remembered, is directed not against the decision, but is confined to the examination of the decision-making process."

So, keeping in view, the settled principles as mentioned above, now the present case in hand is to be considered.

8. The first contention raised by the Learned Advocate for the workman is that the inquiry officer appointed by the party No.1 to conduct the inquiry against the workman was no body other than an employee of the party No.1 itself and as such, the entire enquiry was vitiated.

However, it is found that there is no force in the contention raised by the Learned Advocate for the workman, as because, it is well settled by the Hon'ble Apex Court in a number of decisions that, "It is well known that inquiries of this type are generally conducted by officers of the employer companies and in absence of any special bias attributed of a particular officer, it is has never been held that the enquiry is bad because it is conducted by an officer of the company.

9. So far the allegation of bias against the Inquiry Officer is concerned, it is well settled that bias against the Inquiry Officer must be specifically pleaded and proved before the Judicator. In this case, the workman has neither specifically pleaded nor proved bias against the Inquiry Officer. Except the allegation of bias made by the workman against the Inquiry Officer, there is no acceptable material on record to infer bias against the Inquiry Officer. Hence I find no force in the contention raised by the Learned Advocate for the workman on that score.

10. So far the submission made regarding the initiation of the departmental inquiry proceeding with the same during the pendency of the criminal proceeding against the workman is concerned, it is well settled by the Hon'ble Apex Court in number of decisions that, "proceedings in a criminal case and departmental proceedings can go simultaneously, except where departmental proceeding and the criminal case are based on the same set of facts and the evidence in both the proceedings is common and basis for this proposition is that proceedings in a criminal case and departmental proceedings operate in distinct and different jurisdictional areas. In departmental proceedings, factors operating in the mind of disciplinary authority may be many, such as enforcement of discipline, or to investigate level of integrity of delinquent or other staff. The standard of proof required in those proceedings is also different from that required in a criminal case. While in departmental proceedings, the standard of proof is one of preponderance of probabilities, in a criminal case, the charge has to be proved by the prosecution beyond reasonable doubt. The departmental proceedings and proceedings in criminal case can proceed simultaneously as there is no bar in there being conducted simultaneously, though separately".

Hence, there is no force in the contention raised by the Learned Advocate for the petitioner.

11. Now, the present case at hand is to be considered with the touch stone of the principles enunciated by the Hon'ble Apex Court as mentioned above. On perusal of the materials on record, it is found that the enquiry officer has based his findings on the materials on record of the departmental proceeding. He has assigned cogent reasons in support of such findings. This is not a case of no evidence. It is also not a case that the findings of the enquiry officer are totally against the evidence on record or that the findings of the enquiry officer are as such, which cannot be arrived at by a prudent man on the evidence on record. Hence, it cannot be said that the findings of the enquiry officer are perverse.

12. So far the question of punishment is concerned; it is found that serious misconducts have been proved against the workman in a properly held departmental enquiry. In this instant case, the workman has been found to be guilty of theft by party No.1. There is nothing wrong by the party No.1 losing confidence in such an employee and awarding punishment of dismissal. The workman was holding a position of trust, where honesty and integrity were inbuilt requirements of functioning and therefore, the matter required to be dealt with firmly and not leniently. Hence, the punishment of dismissal from services of the workman cannot be said to be shockingly disproportionate to the proved misconducts. Hence, it is ordered:

ORDER

The action of the management of M/s. WCL in dismissing the services of Shri P.S. Tiwari w.e.f. 31.03.2006 is legal and justified. The workman is not entitled to any relief.

J. P. CHAND, Presiding Officer

नई दिल्ली, 9 अप्रैल, 2014

का.आ. 1268.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार वेस्टर्न कोलफील्ड्स लिमिटेड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 79/2005) को प्रकाशित करती है जो केन्द्रीय सरकार को 09/04/2014 को प्राप्त हुआ था।

[सं. एल-22012/220/2004-आईआर (सीएम-II)]

बी. एम. पटनायक, डेस्क अधिकारी

New Delhi, the 9th April, 2014

S.O. 1268.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 79/2005) of the Central Government Industrial Tribunal-cum-Labour Court, Nagpur as shown in the Annexure in the Industrial Dispute between the management of Majri Area Kuchana of WCL, Western Coalfields Ltd., (HQ), and their workmen, received by the Central Government on 09/04/2014.

[No. L-22012/220/2004-IR (CM-II)]

B. M. PATNAIK, Desk Officer.

ANNEXURE

**BEFORE SHRI J. P. CHAND, PRESIDING OFFICER,
CGIT-CUM-LABOUR COURT, NAGPUR**

Case No. CGIT/NGP/79/2005

Date: 25.03.2014

Party No. 1 : The Chief General Manager,
Majri Area Kuchana of WCL,
Post: Shembul,
Chandrapur (MS).

: The Chief Personnel Manager
(IR),
WCL (HQ), Coal Estate,
Civil Lines,
Nagpur-440001.

Versus

Party No. 2 : Shri Lomesh Khartad, General
Secretary,
National Colliery workers congress,
Dr. Ambedkar Nagar, Ballarpur,
Tah. Ballarpur, Distt. Chandrapur
(MS).

AWARD

(Dated: 25th March, 2014)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of WCL and their union, "NCWC" for adjudication, as per letter No.L-22012/220/2004-IR (CM-II) dated 28.09.2005, with the following schedule:-

"Whether the action of the management of Majri Area of WCL in recovering the penal rent at market rate from the concerned employees who were in occupation of company's quarters is legal and justified? If not, to what relief they are entitled?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the union, "National Colliery workers congress", ("the union" in short), filed the statement of claim and the management of WCL, ("Party No. 1" in short) filed their written statement.

The case of the union as presented in the statement of claim is that it is a registered trade union under the Trade Unions Act, 1926 and the service conditions of the employees are governed by certified standing order, payment wages Act, other Acts and National Coal Wage Agreements ("NCWA" in short) and the terms and conditions contained in the NCWAs are mandatory and binding on all the parties and party No.1 is a state within the meaning of Article-12 of the Constitution of India and there is specific mention in NCWA that the management of the Coal companies, on their part will not resort to unilateral interpretation of the Agreement and in case of any doubt or difficulty in interpretation on any clause of the agreements, the same shall be referred to and settled by JBCCI or a Sub-Committee constituted by the JBCCI and there is also specific provision that the employees, who have not been provided with company's accommodation, will be entitled for house rent allowance per month and there is also further provision that the employees, who have been provided with sub-standard quarters, shared accommodation, seat in barracks, mess or hostels and single room etc. will also be paid house rent allowance and it is further provided that unauthorized occupants of house will not be entitled to any house rent allowance, until they vacate the houses and there is no question of deduction of penal rent.

It is further pleaded by the union that Tulsi Rampandey, Dumper operator was working at Rajura colliery, where he was allotted with company's accommodation and due to exigencies of job, he was transferred to Chargaon w.e.f. 27.06.1995 and he used to attend duties from Rajura colliery and as he was facing acute trouble in coming and going from Chargaon to Rajura, he applied for allotment of accommodation at Chargaon to party No.1 and the committee members of the

accommodation allotment committee recommended his case for allotment of accommodation and quarters were allotted to others including juniors, but the case of the Shri Tulsi Ram Pandey ("the workman" in short) was not considered and he was ordered to vacate the accommodation at Rajura and the party No.1, without following the procedure of law and in utter disregard to the provisions of NCWAs and payment of wages Act started deducting penal rent of Rs.1720 per month from August, 2000 to 30.06.2002 from the wages of the workman and though the workman and the union approached the management through letters, party No.1 did not pay any heed and the action of party No.1 is illegal and against the principles of natural justice and the workman is entitled for refund of the penal rent deducted from his wages with @ 18% simple interest there on.

3. The party No.1 in the written statement has pleaded inter-alia that the union is not an union of the workers of either Rajura colliery or Chargaon colliery to which establishment the alleged dispute is raised and the union is not authorized to espouse the dispute.

It is further pleaded by party No.1 that the workman was transferred from Rajur colliery to Chargaon open cast mine and he was allotted with a quarters at Rajur, but he was not allotted with any quarters at Chargaon, due to non-availability of quarters and eventhough, the workman was not entitled to retain the quarters at Rajura, after being transferred to Chargaon, the management did not deduct any penal rent and the workman, while occupying the quarters at Rajura, unauthorizedly occupied another quarters at Majri in August, 2000 and for such unauthorized occupation of quarters at Majri, the management had to charge penal rent and deduct the same from his wages with effect from August, 2000 to May, 2002 at the rate of Rs. 1720 per month, according to the Rules of the Company and there is no condition of service that every employees of the company must be provided with quarters and allotment of quarters depends upon its availability and subject to fulfillment of House Allotment Rules and its action is therefore, is perfectly justified and lawful and the workman is not entitled to any relief.

4. In the rejoinder, the union has pleaded that the preliminary objections raised by the party No.1 are not maintainable and it is authorized to espouse the dispute on behalf of the workman.

5. In support of their respective claims, both the parties have led oral evidence, besides placing reliance on documentary evidence. The union has examined the workman as a witness, whereas, one J.S. Sayare has been examined as a witness on behalf of the party No.1.

6. The workman in his evidence on affidavit has reiterated the facts mentioned in the statement of claim. However, in his cross-examination, the workman has stated

that he cannot say the Rules or provisions, under which, it was necessary for the management to allot a quarters to him at the place of his transfer immediately, about which he has mentioned in paragraph 6 of his affidavit and he was allotted with a quarters at Rajura and he did not vacate the said quarters, even after his joining at Chargaon and as no quarters was allotted to him at Chargaon, he was allowed to draw house rent allowance and he received house rent allowance from Chargaon, even though, he had retained the quarters at Rajura and he has not filed any document to show that he vacated the quarters at Rajur a in August, 2000. The workman has admitted that at Chargaon, he was staying in Miner's quarters No. 108 and he has not filed any document to show that he was allotted with quarters No. 108 at Chargaon. The workman has further admitted that charge sheet dated 26.08.2000 was issued by the management of Chargaon colliery against him on the allegation of unauthorized occupation of quarters No. 108 and he submitted his reply to the said charge sheet as per Ext. W-II and in Ext. W-II, he had mentioned that he started occupying quarters No. 108 of Majri colliery from August, 2000. The workman has categorically admitted that as he occupied quarters No. 108, without allotment of the same unauthorizedly from August, 2000 till May, 2002, management deducted Rs. 1720 per month as penal rent.

7. The evidence of the witness for the party No.1 on affidavit is in the line of the stands taken by the party No.1 in the written statement. In his cross-examination, the witness for the party No.1 has stated that the penal house rent was recovered from the workman as per the circular given by the management regarding imposition of penal rent, which has been filed as annexure-E and the punishment of recovery of penal house rent from the workman was imposed against him basing on the charge sheet, Ext. M-I and punishment of recovery of penal rent has not been prescribed in the certified standing order of WCL and in the order of recovery of penal house rent, Ext. M-II, there is no mention about recovery of penal house rent as per the circular.

8. At the time of argument, it was submitted by the learned advocate for the union that the union is authorized to espouse the industrial dispute on behalf of the workman and there was no provision either in the standing order or the NCWAs which are binding on the parties, for recovery of penal house rent and as such, the recovery of penal house rent @ Rs. 1720 per month from August, 2000 to May, 2002 from the wages of the workman was illegal and the workman is entitled for refund of the amount, after deduction of the normal house rent for the said period, for the quarters in occupation of the workman at Chargaon.

9. Per contra, it was submitted by the learned advocate for the party No.1 that the workman while keeping the quarters allotted to him at Rajura, he drew house rent

allowance at Chargaon and also illegally occupied one quarters at Chargaon from August, 2000 and remained in unauthorized possession of the same till May, 2002 and as such, the party No.1 was entitled to deduct penal rent from him and there was no illegality in the action of the party No.1 and the workman is not entitled to any relief.

10. Perused the record including the pleadings of the parties, evidence, both oral and documentary adduced by the parties. Considered the submission made by the learned advocates for the parties. From the materials on record, the following facts are found to be proved.

- (i) After the transfer of the workman from Rajura colliery to Chargaon open cast mine, the workman remained in occupation of the quarters at Rajura.
- (ii) The workman in spite of occupying the quarters at Rajura, drew house rent allowance at Chargaon.
- (iii) The workman without allotment of the quarters No. 108 at Chargaon occupied the same illegally from August, 2000 and remained in occupation of the same till May, 2002.
- (iv) Penal house rent @ Rs. 1720 per month was deducted from the wages of the workman for the period of August, 2000 to May, 2002.
- (v) The charge sheet dated 26.08.2000, under clauses 26.1, 26.14 and 26.22 of the Certified Standing Order as per Ext. M-I was submitted against the workman on the allegation of his occupying the quarters at Chargaon unauthorizedly.
- (vi) Order as per Ext. M-II was passed by party No.1 for recovery of the penal house rent @ 1720 per month, holding that the explanation submitted to the charge sheet dated 26.08.2000 not be satisfactory.

11. Admittedly, the punishment of recovery of penal rent from an employee has not been provided in the standing order, so, the order passed by party No.1 as per Ext. M-II for recovery of penal house rent from the workman is not legal and cannot be sustained.

12. Now, the question remains for consideration is as to what relief or reliefs the workman is entitled to. Admittedly, the validity of the Office Memorandum No. 61 dated 3rd June, 1988 issued by the party No.1 for recovery of penal house rent for unauthorized occupation has not been challenged by any union. Hence, the said memorandum still holds good. According to the said memorandum, maximum a sum of Rs. 150 per month can be charged for unauthorized occupation of the quarters. As the workman was in occupation of the quarters at Chargaon unauthorizedly from August, 2000 to May, 2002, he is liable to pay Rs. 150 per month as penalty house rent. Moreover, it is the admitted case that the workman received

house rent allowance for the said period. So, the workman is entitled for refund of the amount of penalty house rent, after deduction of the penalty house rent @ Rs. 150 per month plus the amount of house rent allowance received by him for the said period. Hence, it is ordered:-

ORDER

The reference is answered in favour of the workman. The workman is entitled to refund of the amount of penalty house rent recovered from his wages for the period from August, 2000 to May, 2002, after deduction of the penalty house rent @ Rs. 150 per month plus the house rent allowance drawn by the workman from August, 2000 to May, 2002 at Chargaon Mine. The party No.1 is directed to implement the award within one month of the notification of the award in the official gazette.

J. P. CHAND, Presiding Officer

नई दिल्ली, 9 अप्रैल, 2014

का.आ. 1269 .—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार वेस्टर्न कोलफील्ड्स लिमिटेड के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 69/2002) को प्रकाशित करती है जो केन्द्रीय सरकार को 09/04/2014 को प्राप्त हुआ था।

[सं. एल-22012/265/2001-आईआर (सीएम-II)]

बी. एम. पटनायक, डेस्क अधिकारी

New Delhi, the 9th April, 2014

S.O. 1269.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 69/2002) of the Central Government Industrial Tribunal-cum-Labour Court, Nagpur as shown in the Annexure in the Industrial Dispute between the management of Hindustan Lalpeth Colliery No. 3 of WCL and their workmen, received by the Central Government on 09/04/2014.

[No. L-22012/265/2001-IR (CM-II)]

B. M. PATNAIK, Desk Officer

ANNEXURE

**BEFORE SHRI J. P. CHAND, PRESIDING OFFICER,
CGIT-CUM-LABOUR COURT, NAGPUR**

Case No. CGIT/NGP/69/2002

Date: 25.03.2014.

Party No. 1 : The Sub-Area Manager,
Hindustan Lalpeth Colliery No. .3
of WCL,
PO: Lalpeth, Distt. Chandrapur
(MS).

Party No. 2 : The Secretary,
Rashtriya Colliery Mazdoor
Congress,
Hinglaj Bhawani Mandir, Junona
Chowk, Chandrapur, Distt.
Chandrapur (MS)

AWARD

(Dated: 25th March, 2014)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of WCL and their workman, Shri Vijay Lingaya Dindewar, for adjudication, as per letter No.L-22012/265/2001-IR (CM-II) dated 19. 02.2007, with the following schedule:-

"Whether the action of the management through the Manager, Hindustan Lalpeth Sub Area, WCL, Distt. Chandrapur in terminating the services of Shri Vijay Lingya Dindewar, Badli piece rated Loader *vide* their letter WCL/SAM/HLA/PER/1665/Dtd. 28.10.1990 w.e.f. 28.10.1990 is proper, legal and justified? If not, to what relief the said workman is entitled?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the union, Rashtriya Colliery Mazdoor Congress, ("the union" in short) filed the statement of claim on behalf of the workman, Shri Vijay Lingya Dindewar, ("the workman" in short) and the management of Western Coal Fields Ltd., ("Party No. 1" in short) filed their written statement.

The case of the workman as presented by the union in the statement of claim is that it is a registered trade union under the Trade Unions Act, 1926 and party No.1 is a government company, owned and controlled by the Central Government and party No.1 is a state within the meaning of Article 12 of the Constitution of India and due to exigencies of jobs and to augment coal production on regular and permanent basis, the party No.1 decided to appoint a few hundred piece rated loaders in the year 1989 and accordingly, notified the vacancies to the Employment Exchange, Chandrapur to sponsor the names and other particulars of the eligible candidates and the Employment Exchange sponsored the names of about 1000 eligible candidates for the posts of loader, which were for the duration of more than three months and the candidates so sponsored were subjected to hard physical tests, besides oral interview and basing on such tests, a merit list of the selected candidates was prepared and letters of appointment commensurate with the number of vacancies were issued and the other selected candidates were

excluded and the candidates issued with the appointment order were subjected to medical examination by the Medical Board in accordance to the standard prescribed under Rule 29-F of the Mines Rule, 1955 and those found fit were deployed on job of loaders and the workman was also selected by the party No.1 for the job of loader and he was appointed as a loader by appointment letter dated 25.11.1989, for a period of three months initially and posted at Hindustan Lalpeth Mine No.3 and his services were extended from time-to-time, i.e. from 01.04.1990 to 30.06.1990 and 01.07.1990 to 30.09.1990 and all of a sudden, *vide* letter No.1665 dated 28.10.1990, the Sub-Area Manager, Hindustan Lalpeth Area terminated the services of the workman with immediate effect on the allegation of workman's antecedents found not to be good and the workman himself and through the union approached the party no.1 repeatedly to take him back in employment, but he was not taken back in service and the police inspector, Chandrapur city police station wrote a letter dated 28.02.1992 to the Sub-Area Manager explaining that the workman had been fined Rs. 15 and Rs. 30 on 17.08.1981 and 21.12.1984 respectively and the same does not debar the workman to continue in service and recommended to take him back in service, but party No.1 did not consider the case of the workman and though party No.1 issued letter No. 1976 dated 14.10.1995 and 59 dated 30.01.1996 to consider his case for re-employment and the workman reported at the office of party No.1, his case was not considered and the party No.1 had considered a number of cases out of the 35 cases raised by the union, but the case of the workman was not considered and the workman is entitled for reinstatement in service with full back wages and consequential benefits w.e.f. 28.10.1990.

It is necessary to mention here that the workman died during the pendency of the reference and as per order dated 02.03.2011, the legal heirs of the workman, i.e. his widow, Smt. Anita Vijay Dindewar, his daughter Sneha Vijay Dindewar and his son Parag Vijay Dindewar were substituted in his place.

3. The case of the party No.1 in the written statement inter-alia is that the appointment of the workman was purely on temporary basis for three months and it was stipulated in the said appointment letter that the appointment was subject to verification of antecedents and such temporary appointment was extended from time-to-time till 30.09.1990 and in the mean time, the antecedents of the workman were got verified through the Suptd. of Police, Chandrapur, who *vide* his letter dated 14.09.1990 informed the management that the character of the workman not to be good and he had been convicted twice for criminal offence on 17.08.1971 and 31.12.1984 and on receipt of the report, the services of the workman were terminated in accordance with the specific terms of his appointment, after the approval of the Chief General Manager, *vide* letter dated 28.10.1990 and at the time of

termination of the workman on 28.10.1990, the last extension of the service of the workman up to 30.09.1990 was already expired and therefore, his services were deemed to have come to an end automatically on 01.10.1990 and as the Police verification report was to be processed for obtaining approval of the Chief General Manager, the issuance of the termination order was delayed for few days and there was no breach of any rule or service conditions and there was no illegality in termination of the services of the workman and as it was evident that the workman had criminal back ground, it was not considered desirable to take him back in employment and the letter written by the Inspector of Police was totally uncalled for and manipulated and it was not bound to accept the same and after consideration of the cases raised by the union, it was found that the case of the workman was outside the scope of consideration, as his services were terminated on account of bad antecedents and not due to absenteeism and the workman is not entitled to any relief.

4. It is necessary to mention here that though the evidence of One Malesh Asalu Kamtam had been filed on behalf of the legal heirs of the deceased workman, the said witness did not appear for his cross-examination. The union and so also, the legal heirs of the deceased workman did not appear to take part in the reference. Hence, the evidence of the witness was expunged and evidence was closed. It is also to be mentioned that no evidence was adduced from the side of the management and both the parties remained absent from 17.02.2014. So, the reference was closed on 27.02.2014 and was posted for award.

5. It is well settled that when a workman raises a dispute challenging the validity of the termination of his services, it is imperative for him to file written statement before the Industrial Court setting out grounds on which the order is challenged and he must also produce evidence to prove his case. If the workman fails to appear or to file written statement or to produce evidence, the dispute referred by the Government cannot be answered in his favour and he could not be entitled to any relief.

6. Moreover, on perusal of the pleadings of the parties and the documents on record, it is found that that the initial appointment of the deceased workman was for three months with some conditions including the condition of verification of antecedents and the workman accepting the conditions joined in duty and the temporary appointment of the workman extended from time to time till 30.09.1990 and after 30.09.1990, his such appointment was not extended. It is also found from the materials on record that as a report from the Superintendent of Police, Chandrapur was received by party no.1 regarding bad antecedent of the workman, he was terminated from services in accordance with the terms and conditions of his appointment by party no.1. Hence, there was no illegality in the action of the party no.1 in terminating the services of the workman. Hence, it is ordered:-

ORDER

The action of the management through the Manager, Hindustan Lalpeth Sub Area, WCL, Distt. Chandrapur in terminating the services of Shri Vijay Lingya Dindewar, Badli piece rated Loader vide their letter WCL/SAM/HLSA/PER/1665/Dtd. 28.10.1990 w.e.f. 28.10.1990 is proper, legal and justified. The workman was not entitled to any relief. Hence, the legal heirs of the deceased workman are also not entitled to any relief.

J. P. CHAND, Presiding Officer

नई दिल्ली, 9 अप्रैल, 2014

का.आ. 1270 .—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार वेस्टर्न कोलफील्ड्स लिमिटेड के प्रबंधन के संबंध में निर्योक्त औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्य 74/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 09/04/2014 को प्राप्त हुआ था।

[सं. एल-22012/396/1997-आईआर (सीएम-II)]

बी. एम. पटनायक, डेस्क अधिकारी

New Delhi, the 9th April, 2014

S.O. 1270.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 74/2000) of the Central Government Industrial Tribunal-cum-Labour Court, Nagpur now as shown in the Annexure in the Industrial Dispute between the management of Western Coalfields Limited and their workmen, received by the Central Government on 09/04/2014.

[No. L-22012/396/1997-IR (CM-II)]

B. M. PATNAIK, Desk Officer.

ANNEXURE

**BEFORE SHRI J.P. CHAND, PRESIDING OFFICER,
CGIT-CUM-LABOUR COURT, NAGPUR**

Case No. CGIT/NGP/74/2000

Date:- 25.03.2014.

Party No.1 : The Chief General Manager,
Western Coalfields Limited.,
Chandrapur Area,
Po. & Dist. —Chandrapur (MS)

Versus

Party No.2 : Jt. General Secretary, R.K.K.M.S.,
604, Behind Giripeth Post Office,
Giripeth, Nagpur-440 010.

AWARD

(Dated: 25th March, 2014)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of Western Coalfields Ltd. and their workman, Ramesh Shankarrao Yetwar to the Central Government Industrial Tribunal-cum-Labour Court, Mumbai, for adjudication, as per letter No.L-22012/396/97-IR(CM-II) dated 11/15.12.1998, with the following schedule:-

"Whether the action of the management namely Chief General Manager, M/s. WCL, Chandrapur Area, PO & Distt. Chandrapur, in terminating Shri Ramesh Shankarrao Yetwar, Ex-Electrician w.e.f. 03.01.1994 is legal and justified? If not, to what relief the workman is entitled and from which date?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the union, "R.K.K.M.S.", ("the union" in short) filed the statement of claim on behalf of the workman, Shri Ramesh Yetwar ("the Workman" in short) and the management of Western Coalfields Ltd. ("Party No. 1" in short) filed its written statement.

The case of the workman as presented by the union in the statement of claim is that it (union) is a registered trade union under the Trade Unions Act and party no.1 is a Government Company and is a "State" within the definition under Article 12 of the Constitution of India and the workman was initially appointed on 17.08.1970 by party no.1 and he was rendering able, efficient and loyal services and he was selected and promoted as Electrician and was posted at Nandgaon Incline and in the year 1993, the workman sustained multiple fractures in his right hand on account of which, he was placed on sick roll at the colliery hospital and although, the workman was not fully recovered from the multiple injuries, the doctors declared him fit and the workman was forced to resume his duties and the repeated requests of the workman to the doctors of the colliery hospital to keep him on sick leave even without pay, as he was not in a position to work as an electrician without fully recovered from fractured right hand, were ignored by the said doctors and the genuine and bonafide inability of the workman to resume his duties was treated as unauthorized absence from duty by the party no.1 and a charge sheet dated 01.07.1993 was submitted against the workman and the workman submitted his reply to the said charge sheet, but the party no.1 constituted a departmental enquiry against the workman and appointed Shri S.A. Basha, Sr. Personnel Officer as the enquiry officer to conduct the departmental

enquiry against the workman and the enquiry officer conducted the enquiry in only one sitting on 28.08.1993 and the workman was not given reasonable opportunity including the assistance of a co-worker to defend himself in the enquiry effectively and the enquiry officer did not explain the procedure of the departmental enquiry to the workman and the enquiry was held in camera and the same was perfunctory and the enquiry officer falsely held the charges to have been proved against the workman and the findings of the enquiry officer are unreasonable and basing on the false and unreasonable findings of the enquiry officer, the Suptd. of Mines/Manager, Nandgaon Incline passed the order of dismissal of the workman from services w.e.f. 03.01.1994 by order dated 02.01.1994 and while imposing the severe most and harsh punishment of dismissal, the punishing authority did not take into consideration the clean and unblemished past service record of the workman and the punishment is harsh, illegal unfair and bad in law.

It is further pleaded by the union on behalf of the workman that before passing of the order of punishment, the disciplinary authority did not serve the second show cause notice to the workman, which is mandatory from November 1991, in view of the judicial pronouncement made by the Hon'ble Apex Court and the enquiry officer appointed to hold the enquiry was working as a welfare officer under the Mines Act and Rules made there under and the enquiry officer was prohibited from acting as the enquiry officer as per Rules 73(2) of Mines (Central) Rules, 1957 and as such, the proceedings of the departmental enquiry and findings there on by the enquiry officer are illegal and therefore, the order of punishment is required to be set aside and quash and the union made representations by letters dated 16.03.1995, 15.04.1996 and 01.07.1996 for reconsideration of the case of the workman, but party no.1 by letter dated 3/5.11.1996 declined to reconsider the case of the workman on the ground of the workman crossing the age of 45 years and on the date of termination of the services of the workman and filing of the appeal dated 23.02.1994 and submission of letter dated 16.03.1995 by the union, the workman was less than 45 years of age, so the ground of rejection by the party no.1 to reconsider the case of the workman is also not a valid ground.

The union has prayed to set aside and quash the order of punishment passed against the workman and to reinstate him in service with continuity, full back wages and consequential benefits.

3. The party no.1 in the written statement, denying all the adverse allegations made in the statement of claim, has pleaded inter-alia that according to the terms of reference, the workman was actually dismissed from services on the basis of proved misconduct and the schedule of reference also indicates that the alleged

termination had been done by the Chief General Manager, which is not at all a fact and the punishment was not imposed by the Chief General Manager, Chandrapur Area and even the name of the establishment, where the workman was working has not been mentioned and due to incorporation of misleading and misconceived facts in the reference without application of mind, the reference is not maintainable in the eyes of law.

It is further pleaded by the party no.1 that the workman was working as an electrician at Nandgaon Incline of Hindusthan Lalpeth Sub-Area and as the job of electrician is a highly skilled and responsible job, remaining absence from duties by an electrician unauthorisedly causes tremendous difficulty to it in maintaining the day to day work and the workman without realizing his responsibility and position, started unauthorisedly absenting from his duties quite frequently during the years 1988, 1989, 1990, 1991 and 1992, for which he had been charge sheeted and warned for habitual neglect of work and disobedience of lawful orders and the warning issued to him did not bring any improvement and change in attitude towards work and attendance to his duty and from 27.06.1993, the workman again started absenting unauthorisedly from his duty and therefore, he was charge sheeted by the Manager, Nandgaon Incline for habitual and unauthorized absence from duty vide charge sheet dated 30.06.1993/01.07.1993 and in the charge sheet, month wise attendance of the workman for the years 1990, 1991, 1992 and upto May, 1993 were specifically indicated and though the workman was asked to submit his written explanation within three days of the receipt of the charge sheet, he did not submit his reply, so a departmental enquiry was ordered vide letter no. 1230 dated 11/14.07.1993 and shri S.A. Bhasha was appointed as the enquiry officer and after constitution of the enquiry, the workman submitted a written explanation, which was taken on the record of the disciplinary proceedings and the enquiry officer after giving due notice to the workman held the enquiry on 28.08.1993 and the workman attended the enquiry and participated in the proceedings and the proceedings were recorded in Hindi Language and were duly signed by the workman.

It is also pleaded by the party no.1 that in the letter of enquiry itself, it was specifically mentioned that if the workman so liked, he could take the assistance of a coworker in the departmental enquiry, but the workman did not bring any coworker with him and during the course of the enquiry also, the enquiry officer offered the workman the opportunity to avail the services of a co-worker, but he declined the opportunity saying of his having no necessity for the same and the enquiry officer also read over his written explanation and explained the charges to him as contained in the charge sheet and being asked by the enquiry officer as to whether he admits the charges, the workman told to be admitting all the charges levelled

against him and after the admission of the workman the charges levelled against him, there was nothing more to do in the enquiry, hence the proceedings were closed by the enquiry officer and as the charge sheet issued against the workman, the explanation of the workman to the charge sheet and the proceedings of the enquiry were in Hindi language and the workman signed the enquiry proceedings, he was fully aware of the entire proceedings against him and the enquiry held against the workman was fully in conformity with the principles of natural justice and the same is fair and proper and the enquiry officer submitted his report on 30.08.1993, holding the workman guilty of the charges and the enquiry proceedings and report of the enquiry officer were gone into by the Suptd. of Mines/Manager, Nandgaon Incline and after applying his own mind independently, he concurred with the findings of the enquiry officer and considering the seriousness of the misconduct and background of the case, the workman was dismissed from services with the approval of the competent authority, w.e.f. 03.01.1994, vide order dated 02.01.1994.

The further case of the party no.1 is that no proof of the alleged accident or supporting medical certificate was ever filed before the management by the workman and in the enquiry also, the workman did not make any statement about his alleged injury/fracture and the absence of the workman was not on any genuine and bonafide ground and the record of the proceeding of the enquiry reveals that the enquiry officer had followed the correct procedure in conformity with the principles of natural justice and the workman was not dismissed on the basis of false charges or unreasonable findings and weightage was given to the past record of the workman which was most unsatisfactory and he did not have unblemished service record and the order of dismissal was not harsh, illegal, unfair and bad in law.

Party no.1 has pleaded that even if no show cause notice was given which might have occurred due to inadvertence, the said technical lacuna will not render its action to be set aside, unless it is established that any prejudice was caused to the workman in absence of such a notice and even, otherwise also, when the workman had himself admitted his misconduct, any reply from him to the show cause would not have affected the action which was taken against him in the background of his repeated and frequent acts of misconduct and the letter constituting the enquiry itself reveals that Shri Bhasha, the enquiry officer was not a welfare officer appointed for Nandgaon Incline, to which the case related and Shri Bhasha was neither working nor posted nor functioning as a welfare officer at Nandgaon Incline and his designation itself reveals that he was functioning as the Senior Personnel Officer at Durgapur Rayatwari colliery, a different establishment and as such, its action cannot be said to be illegal on that count and there is no provision in law or

any obligation cast upon the employer to take back dismissed employees and it had taken a general decision that such loaders who had been dismissed from service on account of unauthorized absence may be reconsidered for employment as badli loaders provided that they were below the age of 45 years and give undertaking in writing for good conduct and regular work and as on examination of the representations of the union in the light of the above mentioned decision, it was found that the workman had already crossed the age of 45 years, therefore his case was not observing the principles of natural justice and the same is legal and proper.

4. As this is a case of dismissal of the workman after holding of a departmental enquiry, the fairness or otherwise of the departmental enquiry was taken up as a preliminary issue for consideration and by order dated 27.11.2013, the departmental enquiry conducted against the workman was held to be legal, proper and in accordance with the principles of justice.

5. At the time of argument, it was submitted by the union representative that though charge sheet was submitted against the workman for habitual absenteeism in the years, 1990, 1991, 1992 and 1993, the details of the dates of such absence of the workman were not mentioned in the charge sheet and the departmental enquiry as conducted by the Enquiry Officer only in one sitting on 28.08.1993 and no prior written notice of the date of the departmental enquiry was given to the workman and at the time of deciding the preliminary issue of fairness of the departmental enquiry, the fact of such non-supply of the notice was not considered. It was further submitted by the union representative that the report of the Enquiry Officer is just sketches and he did not analyzed the charges of habitual absenteeism and absence of the workman unauthorisedly for more than 10 days and though in the departmental proceedings, it was recorded about the workman admitting the charges levelled against him, it is clear that the reply of the workman to the charge sheet, in which it was mentioned by the workman that for bonafide reasons, he remained absent was not considered by the Enquiry Officer and the findings of the Enquiry Officer are without sufficient evidence on record of the enquiry and therefore are perverse and even though punishment of demotion of the workman from electrician category V to category IV was imposed against the workman, basing on earlier departmental enquiry held on the charge sheet dated 03/05.02.1992, no document has been filed by the party No.1 to show that there was demotion of the workman from electrician category V to category IV and as such it can be inferred from the same that the workman was exonerated from the charge of remaining unauthorized absence from work up to the period of 24.02.1992 and such exonerated period of absence was again included in the charge sheet in question and due to the failure of the Enquiry Officer to analyzed the records and to conclude

the charges to have been proved against the workman, it can be held that the findings of the Enquiry Officer are perverse.

It was further submitted by the Union representative that though the Model Standing Orders, under which the workman was charge sheeted, there is no provision regarding supply of the copy of the findings of the enquiry officer and issuance of second show cause notice to the workman, in view of the direction of the Hon'ble Apex Court in the decision 1994 LAB I.C.-762 (Managing Director ECIL, Hyderabad Vs. B. Karunakar & Others) it was incumbent upon the party no.1 to supply the copy of the report submitted by the enquiry officer and to issue the second show cause notice to the workman, but the same was not done by party no.1, before imposition of the punishment and the departmental enquiry was not served on the workman and he was forced to accept the charges levelled against him and was compelled to sign on the proceedings of the departmental enquiry, which was held and concluded in a single sitting and had the workman been supplied with the report of the enquiry office alongwith the second show cause notice, he would have been in a position to bring such facts to the knowledge of the disciplinary authority and thus, there was violation of the principles of natural justice and denial of reasonable opportunity to the workman and therefore, the order of punishment is liable to be quashed and set aside.

It was further submitted by the union representative that the workman had rendered 24 years of service and he had been exonerated from the charge of remaining absent from duty prior to 1992 and therefore, the punishment imposed upon the workman was harsh and disproportionate and the workman was charged under clause 17(1) (d) for habitual absenteeism and under clause 17 (1)(n) for remaining absent without permission or without satisfactory cause for more than 10 days and due to non-mention of the dates on which the workman remained absent from work from January, 1990 to May, 1993, the charges levelled against the workman was vague and unspecific and in the charge sheet dated 30.06.1993/ 01.07.1993, the workman was charged that he was unauthorizedly absenting from work from 27.06.1993 i.e. just for 4 days on the date of issue of the charge sheet and therefore, the clause 17 (1) (n) does not apply and as such, the findings of the enquiry officer are not in conformity to clause 17 (1)(n) of the Model Standing Order and as such, the action of the management dismissing the workman for the said absence is unfair and unlawful and the workman is entitled for full wages and other consequential benefits w.e.f. 03.01.1994 to 31.12.2011, the date of the workman attaining the age of 60 years.

In support of the contentions, reliance was placed by the union representative on the decisions reported in 2013 LAB IC (NOC) 542 (Jhar) (Bharat Prasad Verma Vs.

State of Jharkhand), 2014 LAB IC-235 (Ranjit Harijan Vs. Union of India) and 2013 LAB IC-4546 (Sanjay Kumar Sharma Vs. State of Jharkhand).

6. Per contra, it was submitted by the representative for the party no.1 that the union has not pleaded and proved by cogent evidence that the report of the enquiry officer is perverse and the report of the enquiry officer is based on evidence on record and the same is also not opposed to the evidence on record of the enquiry and the findings are not as such, which no reasonable person could have arrived at and therefore, the report of the enquiry officer cannot be held to be perverse. It was further submitted that the punishment imposed against the workman cannot be held to be disproportionate much less shockingly disproportionate to the charges proved against him in a properly conducted departmental enquiry against him and the punishment of dismissal is quite fair, proper and in accordance with law and the workman is therefore not entitled to any relief.

7. Before delving into the merit of the matters, I think it proper to mention the settled principles regarding the jurisdiction of the Tribunal to interfere with the disciplinary matters, in a number of decisions, it has been held by the Hon'ble Apex Court that, "the jurisdiction of the Tribunal to interfere with the disciplinary matters for punishment cannot be equated with an appellate jurisdiction. The Tribunal cannot interfere with the findings of the enquiry officer or competent authority, where they are not arbitrary or utterly perverse.

It is also settled beyond doubt that a findings recorded in a domestic enquiry cannot be characterized as perverse by the labour court, unless it can be shown that such a finding is not supported by any evidence or is entirely opposed to the whole body of the evidence adduced. In a domestic enquiry, once a conclusion is deducted from the evidence, it is not permissible for some other authority to assail that conclusions, even though it is possible for some other authorities to arrive at a different conclusion on the same evidence.

So, keeping in view the settled principles as mentioned above, now, the present case in hand is to be considered.

8. Admittedly, charges under clauses 17 (i)(d) and 17 (i) (n) of the Model Standing Orders clause 17(i)(d) and 17 (i)(n) read as follows:-

17(i)(d) : Habitual late attendance or habitual absence without leave or sufficient cause.

17(i)(n) : Continuous absence without permission and without satisfactory cause for more than ten days.

On perusal of the charge sheet submitted against the workman, it is found that the same is dated 30.06.1993/

01.07.1993. According to the allegations in the charge sheet, the workman remained continuous absent without permission and without satisfactory cause from 27.06.1993. On the face of the allegations levelled against the workman, it is found that the alleged absence of the workman was not for more than 10 days. So, the charge under clause 17 (i)(n) of the Model Standing Order was not applicable to the case of the workman.

It is pertinent to mention here that in his report the enquiry officer has mentioned that the first charge against the workman is, "charge no.1: that the accused workman is absenting unauthorisedly w.e.f. 27.06.1993" and the second charge is, "Charge no.2: that the attendance of the Accused workman is very much less during 1990, 1991, 1992 and 1993 (till May, 1993).

From the facts as mentioned above, it is crystal clear that the enquiry officer himself was not aware of the real charges levelled against the workman.

It is also found from the enquiry report submitted by the enquiry officer that except the reply submitted by the workman to the charge sheet, which was marked as MR Ext. No.2, no other evidence, either oral or documentary was produced by the management to prove the charges levelled against the workman. In his enquiry report, the enquiry officer has mentioned that, "In MR Ext. No.2, the Accused workman has stated that he could not attend his duty due to tension in his home and he assured the management that he will do his duty in future regularly." However, on perusal of the reply submitted by the workman to the charge sheet, it is found that the workman in the said reply had mentioned that due to fracture of his hand there was delay in submitting the reply and on 27.06.1993 he had sent application for three days leave upto 29.06.1993, but his leave application was rejected and the charge sheet was submitted against him and till 16.07.1993 he remained in sick leave and on 17.07.1993, he resumed his duties and due to tension in his family he was not able to perform his duties regularly. From the contents of MR Ext. No.2, it cannot be said that the workman had admitted the charges levelled against him in his said reply.

9. It is also necessary to mention here that from the documents filed by the party No.1, it is found that a charge sheet dated 27.01.1992/01.02.1992 had been submitted against the workman for habitual absenteeism and after holding of a departmental enquiry, order of demotion of the workman from electrician category V to category IV was imposed against him. However, the workman as again charge sheeted for habitual absenteeism for the period from 1990 to May, 1993. The Enquiry Officer did not consider about the workman to have already been punished in the earlier departmental enquiry for habitual absenteeism till 01.02.1992. From the above facts, it can be held that the findings of the Enquiry Officer are perverse.

10. Admittedly, in this case, the copy of the enquiry report submitted by the Enquiry Officer and second show cause notice were not given to the workman. In the judgment reported in 1994 LAB IC -762(Supra), the Hon'ble Apex Court have held that,

“Refusal to furnish copy of Inquiry Officer's report to delinquent-Amounts to denial of reasonable opportunity.

XXXX XXXX XXXXX XXXX

Inquiry report-Inquiry held by person other than Disciplinary Authority-Copy of inquiry report has to be furnished to delinquent-This applies to employees in all establishments whether Government or non- government, public or private.”

Applying the principles enunciated by the Hon'ble Apex Court as mentioned above and so also, by the Hon'ble Courts in the decisions cited by the union representative to the present case in hand, it is found that the non supply of the copy of the report of the Enquiry Officer and the second show cause notice to the workman caused prejudice to him and he was denied the chance of reasonable opportunity to prove his innocence.

As it is already held that the findings of the Enquiry Officer are perverse and there was breach of the principles of natural justice, due to non supply of the enquiry report and second show cause notice to the workman, the punishment of termination of services of the workman cannot be sustained. Hence, the order of termination of the services of the workman w.e.f. 03.01.1994 is quashed and set aside.

11. Now, the question remains for consideration is as to what relief or reliefs the workman is entitled. It is the admitted case that in the normal course, the workman would have been retired from service on 31.12.2011 on superannuation, after attaining the age of 60 years. So, there is no question of continuing of the workman in service after his reinstatement. Keeping in view the facts and circumstances of the case in mind, I think that payment of 50% wages to the workman w.e.f. 03.01.1994 to the supposed date of superannuation on attaining the age of 60 years will meet the ends of justice. Hence, it is ordered:-

ORDER

The action of the management namely Chief General Manager, M/s. WCL, Chandrapur Area, PO & Distt. Chandrapur, in terminating Shri Ramesh Shankarrao Yetwar, Ex-Electrician w.e.f. 03.01.1994 is illegal & unjustified. The workman is entitled to 50% of the wages w.e.f. 03.01.1994 to the date of his deemed superannuation on attaining the age of 60 years. The party No.1 is directed to carry out the award within one month of the date of publication of the award in the official gazette failing which, the amount of the aforesaid wages as calculated will bear simple interest

at the rate of 8% per annum from the date of payment due till the date of actual payment of the same to the workman.

J. P. CHAND, Presiding Officer

नई दिल्ली, 9 अप्रैल, 2014

का.आ. 1271 .—औद्योगिक विवाद अधिनियम, 1947(1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एफ. सी. आई. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 2, चण्डीगढ़ के पंचाट (संदर्भ संख्या 824/2005) को प्रकाशित करती है जो केन्द्रीय सरकार को 09/04/2014 को प्राप्त हुआ था।

[सं. एल-22012/53/2001-आईआर (सीएम-II)]

बी. एम. पटनायक, डेस्क अधिकारी

New Delhi, the 9th April, 2014

S.O. 1271.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 824/2005) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Chandigarh as shown in the Annexure in the Industrial Dispute between the management of Food Corporation of India, and their workmen, received by the Central Government on 09/04/2014.

[No. L-22012/53/2001-IR (CM-II)]

B. M. PATNAIK, Desk Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH.

PRESENT:

SRI KEWAL KRISHAN, Presiding Officer

Case No. I.D. No.824/2005

Registered on 8.9.2005

Sh. Mukund Singh, C/o General Secretary, Trade Union Council, Patiala. Petitioner

Versus

1. The Assistant Manager (D), Food Corporation of India, Dharamkot.
2. The Sr. General Manager, Food Corporation of India, R.O Punjab, Sector 34, Chandigarh. Respondents

APPEARANCES:

For the Workman : Ex parte

For the Management : Sh. N. K. Zakhmi Adv.

AWARD

(Passed on- 28.3.2014)

Central Government vide Notification No. L-22012/53/2001 [IR(CM-II)] Dated 23.1.2002, by exercising its powers under Section 10 Sub section (1) Clause (d) and Sub section (2-A) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'Act') has referred the following Industrial dispute for adjudication to this Tribunal:-

“Whether the action of the management of Food Corporation of India in terminating the services of Sh. Mukund Singh, S/o Sh. Darshan Singh on 28.1.99 is legal and justified? If not, to what relief he is entitled to?”

In response to the notice the workman appeared and submitted statement of claim pleading that he was employed by the respondent management through a contractor and he served for four years and three months when his services were terminated against the provisions of the Act. That the management indulged in unfair labour practice. He was drawing a salary of Rs.1000/- per month. That he be reinstated in service with back wages.

Respondent management filed written reply controverting the averments and pleaded that they did not employ the workman and there was no relationship of master and servant. That the management entered into an agreement with the third party for deployment of watch and ward for protection of foodgrains. That the workman was engaged by the contractor and deployed by the respondent management. Otherwise, the applicant is not an employee of the respondent management.

Parties led their evidence.

In support of its case the workman appeared in the witness box and filed his affidavit supporting his case as set out in the claim petition.

On the other hand the respondent management has examined Deepak Sharma who filed his affidavit reiterating the case of the respondent management.

None was appearing on behalf of the workman after 14.5.2013 and accordingly registered notice was ordered to be sent to workman for 6.2.2014 vide order dated 9.12.2013 and the workman was proceeded against exparte vide order dated 6.2.2014.

I have heard Sh. N.K. Zakhmi, counsel for the management.

It may be added at the outset that it is the case of the workman himself that he was employed by the FCI through a contractor. Though in his affidavit the workman deposed that he was employed by the respondent management. Respondent management is a statutory body having its rules and regulations and nothing has come on

the file that any procedure was followed before employing the applicant by it. It cannot be said from the mere assertions that he was employed by the respondent management more particularly when the case of the workman himself is that he was employed through the contractor. Thus, he has failed to prove that he was employed by the respondent management and rather as per his own admission, he was engaged by the contractor. There is nothing on the file to suggest that the engagement of workman through contractor by respondent management was not bonafide and was a mere camouflage. Thus, it cannot be said that the workman was an employee of the FCI. Being so, it cannot be said that his services were terminated by it.

In result, the reference is answered against the workman holding that he is not entitled to any relief. Let hard and soft copy of the award be sent to the Central Government for further necessary action.

KEWAL KRISHAN, Presiding Officer

नई दिल्ली, 9 अप्रैल, 2014

का.आ. 1272 .—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार ई. सी. एल. के प्रबंधन के संबंधित नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, आसनसोल के पंचाट (संदर्भ संख्या 32/1999) को प्रकाशित करती है जो केन्द्रीय सरकार को 09/04/2014 को प्राप्त हुआ था।

[सं. एल-22012/289/1998-आईआर (सीएम-II)]

बी. एम. पटनायक, डेस्क अधिकारी

New Delhi, the 9th April, 2014

S.O. 1272.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 32/1999) of the Central Government Industrial Tribunal-cum-Labour Court, Asansol as shown in the Annexure in the Industrial Dispute between the management of ECL, and their workmen, received by the Central Government on 09/04/2014.

[No. L-22012/289/1998-IR (CM-II)]

B. M. PATNAIK, Desk Officer

ANNEXURE**BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ASANSOL****PRESENT:**

SRI. LALCHANDDEY, Presiding Officer/Link Officer

REFERENCE NO. 32 OF 1999**PARTIES:**

The management of Sripur Colliery of M/s. ECL,
Burdwan.

Vs.

Sri Badri Tiwari

REPRESENTATIVES:

For the management : Shri P.K. Das, Ld.
Advocate

For the union (Workman) : Sri. S.K. Pandey,
General Secretary of
Colliery Mazdoor
Congress (HMS)

INDUSTRY: COAL STATE: WEST BENGAL

Dated—18.02.2014

AWARD

In exercise of powers conferred by clause (d) of Sub-section(1) and Sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), Govt. of India through the Ministry of Labour vide its letter No. L-22012/289/98/IR(CM-II) dated 25.05.1999 has been pleased to refer the following dispute for adjudication by this Tribunal.

SCHEDULE

“Whether the action of the management of Sripur Colliery in not regularising the services of Sri. Badri Tiwari, Armed Guard as Security Havildar w.e.f. 01.01.97 is justified? If not, to what relief is the workman entitled?”

Having received the Order No. L-22012/289/98/IR(CM-II) dated 25.05.1999 of the above said reference from the Govt. of India, Ministry of Labour, New Delhi for adjudication of the dispute, a reference case No. 32 of 1999 was registered on 07.06.1999 and accordingly an order to that effect was passed to issue notices through the registered post to the parties concerned directing them to appear in the court on the date fixed and to file their written statements along with the relevant documents and a list of witnesses in support of their claims. In pursuance of the said order notices by the registered post were sent to the parties concerned.

On perusal of the record I find that the case is remarked as “No Dispute Award” passed by my predecessor as the workman has already superannuated from service. Having heard both the parties and on their prayer I came to the conclusion that the case may be closed and a “No Dispute Award” may be passed as the workman has already been superannuated and no dispute exists

between the parties. Hence the case is closed and accordingly it is hereby ordered :

ORDER

Let an “Award” be and same is passed as no dispute existing. Send the copies of the order to the Govt. of India, Ministry of Labour, New Delhi, for information and needful. The reference is accordingly disposed of.

LAL CHAND DEY, Presiding Officer/Link Officer

नई दिल्ली, 9 अप्रैल, 2014

का.आ. 1273.—औद्योगिक विवाद अधिनियम, 1947(1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एन. एल. सी. एल के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ संख्या 24/2011) को प्रकाशित करती है जो केन्द्रीय सरकार को 09/04/2014 को प्राप्त हुआ था।

[सं. एल-22012/34/2010-आईआर (सीएम-II)]

बी. एम. पटनायक, डेस्क अधिकारी

New Delhi, the 9th April, 2014

S.O. 1273.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. 24/2011) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure in the Industrial Dispute between the management of Neyveli Lignite Corporation Ltd. and their workmen, received by the Central Government on 09/04/2014.

[No. L-22012/34/2010-IR (CM-II)]

B. M. PATNAIK, Desk Officer

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT
CHENNAI**

Tuesday, the 18th March, 2014

PRESENT:

K. P. PRASANNA KUMARI, Presiding Officer

Industrial Dispute No. 24/2011

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), between the Management of Neyveli Lignite Corporation Ltd. and their workman).

BETWEEN

The Special President
Jeeva Oppantha Thozhilalar Sangam
D-13, Mahatma Gandhi Road
Block-24
Neyveli 1st Party/Petitioner Union

AND

The Director (Personnel)
Neyveli Lignite Corporation Ltd.
Neyveli 2nd Party/Respondent

APPEARANCE:

For the 1st Party/Petitioner Union : M/s V. Ajoy
Khose, G.
Janardhanam,
Advocates

For the 2nd Party/Management : M/s NAK Sarma,
N. Nithianandam,
Advocates

AWARD

The Central Government, Ministry of Labour & Employment vide its Order No. L-22012/34/2010-IR (CM-II) dated 08.03.2011 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is :

“Whether the demand of Shri T. Ramachandran & 40 others (as per annexure) for employment in Neyveli Lignite Corporation Ltd., Neyveli is legal and justified? If so to what relief they are entitled?”

2. On receipt of the Industrial Dispute this Tribunal has numbered it as ID 24/2011 and issued notices to both sides. Both sides have entered appearance through their counsel and have filed their claim and counter statement respectively. The petitioner has filed a rejoinder in answer to the Counter Statement.

3. The averments in the Claim Statement filed by the Petitioner in brief are these:

The petitioner is a Trade Union registered under the Trade Unions Act. The Respondent is a Public Sector Undertaking involving mining of lignite and generation of electricity through Thermal Power Stations. The Respondent, instead of filling up vacancies in the post of labour/workman category started to employ workman in the name of contract labourers and put them in regular vacancies that had arisen due to death or retirement of workers. The work done by the contract labourers are perennial, continuous and regular in nature. All the contract labourers were directly involved in production. They were doing all kinds of works viz. unskilled, semi-skilled, skilled and highly skilled. Though they were doing similar work

as that of direct employees they were not paid wages, allowances or benefits as given to the regular workers. Since the contract labourers were not given proper wages and statutory benefits and since they were exploited, an industrial cooperative society was formed in the year 1990 to alleviate their grievances. All the contract labourers who were working as on the date of the formation of the Society were allowed to give application to enroll as members of the Society. However, the Respondent and the Society enrolled workers in accordance with their whims and fancies rather than enrolling all the contract workers. The workers enrolled with the Society are ensured payment of minimum guaranteed wages, bonus, provident fund, etc. However, the other contract workers who were not members of Society were not given such benefits. A settlement under Section-12(3) of the ID Act was signed between the Unions and the Respondent to regularize service of the contract workers who were members of the Society and who were employed in the production areas, within a period of 5 years in a phased manner. Contract labourers were employed by the Respondent in their B&C Plant and fertilizer plant also. Almost all the 41 contract labourers concerned in this dispute joined the Fertilizer Plant during the period from 1986 to 1996. Five of them joined later. All of them have put in continuous service from 3 to 15 years. The B&C unit was closed in the year 2001 and the Fertilizer Unit in 2002. While closing the B&C unit, the Respondent re-deployed all the permanent workmen who were employed in the said unit in other areas. The contract labourers who were employed through the Society were also given work in other areas. However, the contract labourers who were employed through individual contractors were not given work in other areas. Those labourers who were employed in B&C unit through individual contractors collectively demanded employment in other areas and were given work accordingly and are still continuing. However, this benefit was not extended to the contract labourers who were employed in the Fertilizer unit through individual contractors. Though, they made representations through various unions repeatedly, there was no response from the Second Party. So most of them have left. Only the 41 workmen concerned in this dispute are demanding employment with the Respondent. In the absence of any response from the Respondent, they have raised industrial dispute by their application before the Asstt. Labour Commissioner, on 13.12.2008. On failure of the conciliation the Government has referred the matter for adjudication by this Tribunal. The so-called Contractors who employed the workmen have no role in the allotment of work or control and supervision of the workmen. The so-called contract labour system was a sham and nominal arrangement. The workmen concerned of the dispute are direct employees of the Respondent for all purposes in the eye of law. The Fertilizer Unit was closed without permission under Section-25(O) of the Industrial Disputes

Act. So the workers shall be deemed to be continuing in service and are entitled to wages and other benefits. Not giving work to contract workers employed by individual contractors while giving work to the workers who were employed through the Society is mala fide, arbitrary and discriminative. The Respondent is bound to provide work to the workmen concerned in this dispute. Since the contract labourers who were senior to the contract labourers enrolled as members of the Society were not given the benefit of regularization and absorption, they filed Writ Petition and this was allowed by the Hon'ble High Court. The order was confirmed by the Division Bench. Though the Respondent had preferred a Special Leave Petition before the Supreme Court against this order, it had later entered into a minutes of understanding to enroll the remaining contract labourers in the Society and to extend bonus and other benefits. If the Respondent had provided employment to the workmen concerned, they also would have been entitled to similar treatment and benefits. Even after the closure of B&C Unit and Fertilizer Unit, the Respondent had employed several persons as contract labourers. An award may be passed holding that the demand of the petitioner that the 41 workers named in the annexure to the Claim Statement for employment with the Respondent is legal and justified and the Respondent may be directed to provide employment to all the 41 workmen concerned from the date on which the others employees of the closed fertilizer factory were given employment in other areas, with continuity of service, back wages and all other attendant benefits.

4. The Respondent has filed Counter Statement contending as follows :

The dispute has been raised after a period of 10 years. As such it is barred by the principles of delay and laches. No employer-employee relationship was existing at any time between the concerned individuals and the Respondent. No appointment letters have been issued by the Respondent to any of the 41 workers. It is not admitted that the 41 persons named in the annexure of the Claim Statement were employed in the Respondent Corporation through private contractors between 1986 and 2000. The petitioner has no *locus standi* to raise the dispute. It is not competent to espouse the cause of non-workmen in the absence of representative character. The petitioner is not a recognized union as far as respondent is concerned. Only the concerned individuals can raise the dispute. The Respondent engages private contractors for executing various types of labour service contracts. The contractors engage contract workers in accordance with the provisions of Contract Labour (Regulation & Abolition) Act. The respective private contractor is the employer of such contract workers. These private contractors are licensed under the CLRA Act. They are paid not less than the minimum wages fixed and also other benefits. These contracts are awarded by open tender or such systems in

a transparent manner. The NLC Industrial Co-operative Service Society Ltd, Neyveli was formed with the objective of preventing exploitation of contract labourers engaged in contract work by private contractors. The Society is registered under the Tamil Nadu Co-operative Societies Act. The 41 persons involved in this dispute did not enroll themselves in the Society. There is nothing on record to show that they requested for membership in the Society. The settlement under Section-12(3) of ID Act encompassed only those workmen of the Society who were engaged in the works of the Respondent. The other workers were excluded from its purview. The directions in the Writ Petition filed by the Society have prospective effect from 15.05.2002. The appeal filed against the order in the Writ Petition was dismissed. In the appeal filed before the Supreme Court, status-quo was ordered. The work carried out by the regular workers and contract workers are entirely different. It is denied that the contract system followed by the Respondent is sham and is intended as smokescreen to exploit the contract workers. Wages for the contract workers are paid by the Contractors. In the absence of employer workman relationship between the parties itself, the dispute is not maintainable. None of the individuals involved in the dispute have been directly employed by the Respondent. The concerned persons are not entitled to any relief.

5. The evidence in the case consists of oral evidence of WW1 and WW2 and MW1 and the documents marked as Exts.W1 to Ext.W31 and Exst.M1 and Ext.M2.

6. The points for consideration are:

- (i) Whether the demand of 41 persons involved in the dispute for employment in the Respondent Corporation is legal and justified?
- (ii)
- (iii) What is the relief, if any, to which they are entitled?

The points

7. The petitioner has raised the dispute on behalf of 41 individuals who are said to have worked with the Respondent as contract workers. According to the petitioner, most of the 41 persons had joined the Respondent undertaking between 1986 to 2000. All of them are said to have put in continuous service ranging from 15 years to 3 years. All these persons are said to have been working in the Fertilizer Unit of the Respondent. The unit was closed in the year 2002. The regular workers who were working in the Fertilizer Unit were redeployed in some other units by the Respondent. Along with them those workers who were members of NLC Industrial Co-operative Society Ltd. (INDCOSERVE) also are said to have been redeployed in other areas. According to the petitioner it was discriminatory for the Respondent not to give work

to the contract workers employed by individual contractors while workers who are members of the Society were given work in other areas or units. According to them, subsequently, a settlement under Section-12(3) of the ID Act was arrived at between the Respondent and Unions to absorb the members of the Society in a phased manner. However, such consideration was not given to the workers who were employed through individual contractors. It is alleged by the petitioner that enrolment of members in the society was done at the whims and fancies of the Respondent. It is claimed by the Union on behalf of the 41 workers involved that if they have been given membership of the Society, they too would have been eligible for absorption. It is claimed by the petitioner on behalf of the workers concerned that they are entitled to continue in the employment of the Respondent from the date on which the other workers of the closed fertilizer factory were given employment in other units and are also entitled to continuity of service, back wages and other benefits.

8. In the Counter Statement the Respondent had stated that it is for the concerned workers to prove that they have been working as contract labourers in the Respondent undertaking as claimed by them. It is further stated by the Respondent that there is no employer-workman relationship between the Respondent and the concerned workmen since the very case of the petitioner is that they were employed through individual contractors. It is further contended by the Respondent that there is no *locus standi* for the petitioner union to agitate the matter since it is not registered with the Respondent and also because it is only a fringe union. It is also contended by the Respondent that the concerned persons are not entitled to any relief for the very reason that they have raised the dispute with a delay of almost 10 years.

9. Before going into the merits of the case, the contentions raised by the Respondent against the maintainability of the petition can be considered one by one. The initial contention raised by the Respondent is that the petitioner has no *locus standi* to raise the dispute. It is clear from the claim statement itself that the petitioner union was formed only in the year 2008 at a time when none of the workers involved were working in the Respondent undertaking. It is admitted by the petitioner that after the closure of the fertilizer unit in the year 2002, the workers involved in the dispute were not working with the Respondent. The members of the union are only contract workers and not the workers who are directly working under the Respondent. However, in spite of this, the contention of the Respondent that the petitioner is not entitled to raise the dispute on behalf of the concerned workers could not be accepted. The concerned workers have joined the union since individual representations said to have been made by them did not receive any positive response. All the 41 members involved

are said to be members of the union and the union is within its right to agitate the claim of the workers in question.

10. The Respondent has contended that in view of the long delay in raising the dispute also the concerned workers are not entitled to any relief. There is no doubt that the dispute raised is a belated one. All the concerned workers were turned out in the year 2002 on closure of the fertilizer unit. They have not explained the delay of several years. However, the dispute does not become not maintainable only on account of this. The Apex Court has stated (1999 6 SCC 82) that since Article-137 of the Limitation Act are not applicable to the proceedings under the Industrial Disputes Act, relief under the Act cannot be denied to the workmen merely on the ground of delay. It is not the function of the Court to prescribe limitation where the Legislature in its wisdom had thought it fit not to prescribe any period, it has been held. In case of delay the relief can be appropriately moulded, it was observed. So delay by itself is not fatal to the case of the petitioner.

11. The very basis of the contention of the petitioner is that the concerned workers are in fact the workers of the Respondent themselves and that their employment through contractors is only for the purpose of exploiting the workers. It is alleged that the contracts are sham in nature. In fact, the very admission made by the General Secretary of the Petitioner Union examined as WW1 would reveal that this case of the petitioner has no basis. The witness has admitted during his cross-examination that all the members of the Petitioner Union are contract workers. At the time of giving evidence, he was working under a particular contractor and prior to that with another contractor. His salary was paid by the Contractor. He admitted that the Contractors would take work which is floated through open public tender. He admitted that the workmen involved in the dispute have also worked with different Contractors. The salary for them were paid by the respective Contractors. They were also working with different Contractors. Thus it could be seen that the workers were approaching the contractors for work and they were employed by those Contractors. There is no case for the concerned workmen that they were directly employed by the Respondent. They were not given any appointment order. They were not paid by the Respondent. The Respondent has stated that all the contractors were having license under the CLRA Act. The interesting aspect is that the contractors under whom the concerned workers had worked are not made parties to the dispute. Only if they were also in the party array, it would have been possible to find out the exact relationship between the petitioner and the Respondent. In fact the case of the petitioner itself is not that there is direct employer-employee relationship but that though employment is through contractor, the Contract is a sham and nominal one. This case raised on behalf of the concerned workmen is not at

all proved. For this reason itself it could not be stated that employer-workman relationship existed between the concerned workmen and the Respondent.

12. To come to the merits of the case, it is the case of the concerned workers that had they been allowed to continue in the employment of the Respondent, they would have been entitled to absorption and regularization. Their case is that when the members of the Society INDCOSERVE were allowed to continue in employment, it was discriminatory not to give employment to the workers concerned. It could be seen from the very claim Statement that the members of the Society were entitled to absorption in a phased manner on account of the settlement arrived at on their behalf. It was only because of this they were re-deployed in other units of the Respondent when the B&C unit and the Fertilizer unit were closed. It is pointed out on behalf of the Respondent that the workers concerned though claimed to have been working with the Respondent from the year 1986 has not chosen to be members of the Society. There is nothing to show that the concerned workers were continuously and regularly working with the Respondent.

13. In view of the decision of the Apex Court also, the concerned workers are not entitled to any relief. Some of the contract workers who were senior to the contract workers enrolled as members of the Society were aggrieved that they were not absorbed by the Respondent. They filed a Writ Petition before the High Court of Madras claiming absorption based on their seniority without reference to their membership in the Society. This Writ Petition was allowed and was confirmed in appeal. The Special Leave Petition filed before the Supreme Court was pending when the matter was referred to this Tribunal. The Supreme Court has given a direction to prepare a seniority list without reference to the members of the Society. The seniority list has been prepared as directed by the Supreme Court. It is admitted by the petitioner that it has impleaded itself before the Supreme Court in the Special Leave Petition. The Supreme Court has been informed that the list has been prepared and the list was approved by the First Respondent Society also. The Court has disposed the appeal stating that the seniority list of the workman having been prepared and is assured to be acted upon there is no reason to keep the appeal alive and has disposed it. The petitioner being a party to this, the order of the Apex Court is binding on it also. The seniority list prepared by the Respondent is produced by the petitioner. It is pointed out by the Respondent that the concerned workers having not been working under the Respondent, even under the contractors after 2002 as admitted by them, the names of none of the concerned workers will find a place in the seniority list. So on the basis of seniority also they will not be entitled to any absorption.

14. Apart from the fact that the workers are not entitled to absorption, they are not entitled to any lesser relief also in the absence of employer-workman relationship between them and the Respondent. So they are not entitled to any relief.

15. In view of my discussion above, the reference is answered against the petitioner. An award is passed accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 18th March, 2014)

K. P. PRASANNA KUMARI, Presiding Officer

Witnesses Examined:

For the 1st Party/Petitioner Union : WW1, Sri K. Venkatesan
WW2, Sri T. Ramachandran

For the 2nd Party/Management : MW1, Sri K.G. Baburao

Documents Marked:

On the petitioner's side

Ex. No.	Date	Description
Ex.W1	18.05.1995	12(3) Settlement regarding abolition of contract labour in production area and absorption
Ex.W2	15.05.2002	Order in W.P. No. 8/1996
Ex.W3	23.12.2002	Letter from NLC Labour Supply Thozhilalar Nala Sangam to the Chairman, NLC Ltd.
Ex.W4	01.01.2003	Letter from NLC Labour Supply thozhilalar Nala Sangam to the Director (Personnel) NLC Ltd.
Ex.W5	16.06.2003	Letter from contract laboures to the Labour Officer, NLC, Neyveli
Ex.W6	23.09.2003	Letter from contract laboures to the Labour Officer, NLC, Neyveli

Ex.W7	24.05.2004	Letter from contract labourers to the Labour Officer, NLC, Neyveli			objections for their enrolment in NLC INDCOSERVE
Ex.W8	14.06.2004	Reminder letter from T. Ramachandran to the Hon'ble Prime Minister, Delhi and others with acknowledgement card	Ex.W22	13.11.2010	Minutes of the General Body Meeting of the 1st Party Union
Ex.W9	19.07.2007	News regarding conciliation talks and the demands of NLC contract labourers	Ex.W23	15.11.2010	Letter from T. Ramachandran to the Director (Personnel) NLC Ltd., making objections regarding the seniority list issued by NLC
Ex.W10	16.02.2008	Orders passed in WA No. 2045 and 2529/02	Ex.W24	08.03.2011	Order issued by the Central Government referring the above dispute for adjudication by this Hon'ble Industrial Tribunal
Ex.W11	11.11.2008	Letter from Spl. President of NLC Jeeva Oppantha Thozhilalargal Sangam to the Director (Personnel), NLC, Neyveli	Ex.W25	-	Identity Cards issued by NLC to the Contract Workers concerned in this dispute (Fertilizer Plant and B & C Plant)
Ex.W12	13.12.2008	Letter from Spl. President of NLC Jeeva Oppantha Thozhilalargal Sangam to the (Deputy) Asstt. Labour Commissioner (Central), Chennai	Ex.W26	-	List of 15 contract workers who originally worked in B&C Plant and Fertilizer Plant but later given alternative employment in other units after closure of B&C and Fertilizer Plants with copy of the application submitted by them alongwith annexures and who were later included in the seniority list issued by NLC
Ex.W13	06.07.2009	Letter from T. Ramachandran to the MD, NLC Ltd. – HQ, Neyveli with acknowledgement card	Ex.W27	-	Seniority list issued by NLC
Ex.W14	08.09.2009	Letter from T. Ramachandran to the Public Information Officer, PRO, NLC, Neyveli with acknowledgement card	Ex.W28	03.06.2012	12(3) settlement
Ex.W15	24.10.2009	Letter from Central Public Information Officer, NLC to T. Ramachandran with annexure A and B	Ex.W29	-	Form-E with relevant portion of the membership list for the year 2008 (Ext.W29)
Ex.W16	14.12.2009	Counter Statement filed by the Second Party before ALC (Central)	Ex.W30	-	Form-E with relevant portion of the membership list for the year 2011 (Ext.W30)
Ex.W17	26.12.2009	Letter from T. Ramachandran to the Chairman, NLC Ltd., Neyveli and 11 others with acknowledgement card	Ex.W31	-	Photocopies of membership identity card issued by the union for the year 2008 and 2011 (Ext.W31)
Ex.W18	22.02.2010	Rejoinder filed by the First Party before ALC (Central)			
Ex.W19	28.05.2010	Failure Report			
Ex.W20	17.08.2010	News Paper Report regarding regularization of contract Labourers			
Ex.W21	09.11.2010	General Notice / Circular issued to the NLC contract labourers calling			
On the Management's side					
			Ex.No.	Date	Description
			Ex.M1	24.06.2008	Order passed in ID No. 58/2002
			Ex.M2	16.09.2009	Order passed in ID Nos. 81 to 99 of 2005

नई दिल्ली, 9 अप्रैल, 2014

का.आ. 1274 .—औद्योगिक विवाद अधिनियम, 1947(1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एस. सी. एल. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, गोदावरीखनी के पंचाट (IT/ID/ 22/2007) को प्रकाशित करती है जो केन्द्रीय सरकार को 09/04/2014 को प्राप्त हुआ था।

[सं. एल-22013/1/2014-आईआर (सी-II)]

बी. एम. पटनायक, डेस्क अधिकारी

New Delhi, the 9th April, 2014

S.O. 1274.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal-cum-Labour Court, Godavarikhani (IT/ID/22/2007) as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of SCCL and their workmen, which was received by the Central Government on 09/04/2014.

[No. L-22013/1/2014-IR (C-II)]

B. M. PATNAIK, Desk Officer

ANNEXURE

BEFORE THE CHAIRMAN, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-CUM-VIADDL. DISTRICT & SESSIONS COURT AT GODAVARIKHANI

PRESENT:

Sri G. V. KRISHNAIAH, Chairman-cum-Presiding Officer, Godavarikhani.

TUESDAY, THE 18TH DAY OF MARCH, 2014.

INDUSTRIAL DISPUTE NO. 22 OF 2007.

BETWEEN

Jameel Ahmed Khan, Ex-Security Guard, Employee Code No.0968038, Service and Protection Corps, SCCL, Ramagundam Division Area-I, C/o. Qr.No.D-322, Gandhinagar, Godavarikhani, Mandal Ramagundam of Karimnagar District.

— Petitioner

AND

The General Manager, S.C.Co.Ltd., Ramagundam Division Area-I.

— Respondent

This Industrial Dispute petition coming on before me for final hearing in the presence of Sri K. Sudhakar Reddy, Advocate, for the petitioner and Sri D. Krishnamurthy, Advocate, for the respondent, and the

matter having stood over before me for consideration till this date, the Court passed the following:-

AWARD

1. This petition is filed under Sec.2-A (2) of I.D. Act seeking reinstatement of the petitioner into service by setting aside the order dated 05.01.1999 passed by the respondent. Petitioner is also seeking the relief of continuity of service and other consequential benefits.

2. The allegations in the petition are as follows:-

3. Petitioner was appointed by the respondent company on 05.05.1975, as Security Guard in the year 1990. He successfully completed 23 years of service to the satisfaction of his superiors. He worked more than required musters from January, 1998 to September, 1998. During the year 1998 petitioner's wife suffered from heart problem and admitted in Government Hospital for taking treatment now and then. Due to that petitioner was unable to inform his absence to the respondent. Petitioner submitted explanation to the management but it was not considered. Charge sheet dated 25.04.1998 was issued for habitual late attendance or habitual absence from duty without sufficient cause. Petitioner submitted his explanation stating that petitioner could not attend his duties because of ill-health of his wife. On 26.11.1998 respondent conducted a departmental enquiry. Even prior to that petitioner gave representation dated 26.11.1998 which is against the Circulars and Orders of the company. Respondent did not consider the genuine explanation of the petitioner and dismissed from service w.e.f. 07.01.1999 by office order dated 05.01.1999. Departmental enquiry was not conducted properly and no opportunity was given to the petitioner to defend himself. Entire proceedings were recorded in English language which is not known to the petitioner and the enquiry was invalid and vitiated.

4. Further extremely harsh punishment which is shockingly disproportionate to the gravity alleged charge levelled against the petitioner and it amounts to economic death of the petitioner. Respondent failed to consider the long services of 23 years put in by the petitioner.

5. Petitioner could not secure any other alternative job and incurred huge debts for his medical and domestic expenses of his family. Petitioner appeared before the High Power Committee for his reinstatement as per the letter dated 31.10.2000, but till today respondent did not re-appoint the petitioner and he lost all his hopes. Subsequent to 08.11.2000 petitioner approached the respondent for reinstatement and therefore this delay in filing this petition.

6. Respondent filed written statement contending that it is a Government company and appropriate Government is Central Government since the coal mining industry is a central subject. The petitioner be ordered to

approach the Industrial Tribunal-cum-Labour Court at Hyderabad. Petitioner failed to exhaust the conciliation procedure under the Industrial Dispute Act and approached this Tribunal directly. Petitioner had put in 130 musters in 1994, 221 musters in 1995, 152 musters in 1996, 123 musters in 1997 and 51 musters from January, 1998 to September, 1998. Petitioner was issued charge sheet dated 26.10.1998 for which he did not submit any explanation. Therefore enquiry was conducted which was attended by the petitioner. He pleaded guilty to the charges levelled against him. Petitioner did not take treatment in any of the company hospitals and did not apply for special leave with half pay if he was sick. The allegation that the petitioner's wife took treatment in his hospital of the respondent company is denied. Departmental enquiry was conducted properly and petitioner was given sufficient opportunity. Petitioner preferred appeal and appeared before High Power Committee headed by Director (PAW) which considered all the relevant documents and past records of the petitioner and confirmed the penalty of dismissal of the petitioner and therefore petition may be dismissed.

7. On 10.07.2013 this Court passed an order regarding the validity of the departmental enquiry and did not find any irregularity in the enquiry conducted by the respondent.

8. During the course of enquiry Ex.W-1 to W-6 are marked on behalf of the petitioner and Ex. M-1 to M-7 are marked on behalf of the respondent.

9. At the time of hearing respondent filed written arguments stating that the petitioner was guilty of the absenteeism, departmental enquiry was conducted properly and petitioner was found to be unfit for reinstatement, during the hearing of appeal by the High Power Committee headed by the Director of the Company and therefore petitioner's plea have no merits. In para No.8 of the written arguments it is contended that the date of birth of the petitioner is 05.05.1953 and his date of retirement is 31.05.2013. Petitioner already crossed superannuation period and therefore no relief can be granted.

10. Now the point for consideration is:

“Whether the petitioner is entitled to any relief USec/11-A of I. D., Act?”.

11. The reply of the petitioner to the charge sheet which is marked as Ex.W-2 shows that due to illness of his wife who is admitted in hospitals in different places. He did not apply for leave and therefore absence for duties may be condoned. Ex.W-3 is the notice dated 31.10.2000 directing the petitioner to attend the interview at Kothagudem on 08.11.2000 at 09.30 am for considering the re-appointment. Petitioner appeared for this interview but was not found fit for reinstatement. Petitioner was initially

issued charge sheet on 25.4.1998 with regard to his absenteeism during February, 1998 and March, 1998. Petitioner was absent for 14 days in February, 1998 and 26 days in March, 1998. This copy of the charge sheet is marked as Ex.W-5. Then other charge sheet dated 23.10.1998 was issued (marked as Ex.W-6) that petitioner was absent from duty for 19 days in April, 1998, 20 days in May, 1998, 28 days in June, 1998, 21 days in July, 1998, 20 days in August, 1998 and 24 days in September, 1998. He was put on notice about the standing order 25:25 for habitual absence. According to the enquiry report which is marked as Ex.M-3 petitioner did not submit any reply to the charge sheet. After enquiry the copy of enquiry report and enquiry proceedings were sent to the petitioner and his representation if any was sought within 7 days. The copy of notice is marked as Ex.M-5. Petitioner submitted reply stating that his only daughter became a victim of dowry harassment, that because of shock of daughter's plight his wife became sick and suffered heart disease. He could not inform the same to the company and therefore his absence may be condoned.

12. Either in enquiry or subsequently the petitioner did not produce any evidence regarding the illness of his wife. It is pertinent note in April, 1998 he was given a notice regarding his absence, notice during February, 1998 and March, 1998. Petitioner ought to have apply for leave or gave some explanation but he continued his absence. In the absence of reliable evidence that the petitioner was compelled by the illness of his wife and the marital disputes of his daughter with her husband, the explanation of the petitioner cannot be accepted. According to the petitioner, his wife underwent treatment in the hospital of the respondent company but the relevant record is not produced.

13. Therefore what remains to the scene is whether the dismissal of the petitioner from service is justified.

14. The mis-conduct alleged against the petitioner does not involve moral turpitude. Petitioner served in the respondent company since 1975 prior to the absence from duties which occurred in the year 1998. There have been no charges against the petitioner. Hence proportionality of punishment can be considered regarding removal from service. Regarding the proportionality of the punishment the following Judgment of the Gujarat High Court has is relevant.

DIVISION BENCH JUDGMENT OF GUJARATH HIGH COURT

**REPORTED IN 1982 LAB. IC.1031
BETWEEN: R.M., PARMAR VRS., GUJARATH
ELECTRICITY BOARD.**

Guide lines laid down in the matter of inflicting punishment of discharge and dismissal :—

1. In a disciplinary proceeding for an alleged fault of an employee, punishment is imposed not in order to seek retribution or to give vent to feelings of wrath.
2. The main purpose of a punishment is to correct the fault of the employee concerned by making him more alert in the future and to hold out of warning to the other employees to be careful in the discharge of their duties so that they do not expose themselves to similar punishment. And the approach to be made is the approach parents make towards an erring or misguided child.
3. It is not expedient in the interest of the administration to visit every employee against whom a fault is established with the penalty of dismissal and to get rid of him. It would be counter-productive to do so for it would be futile to expect to recruit employees who are so perfect that they would never commit any fault.
4. In order not to attract the charge of arbitrariness it has to be ensured that the penalty imposed is commensurate with the magnitude of the fault. Surely one cannot rationally or justly impose the same penalty for giving a slap as one would impose for homicide.
5. When different categories of penalties can be imposed in respect of the alleged fault, one of which is dismissal from service, the disciplinary authority perforce is required to consult himself for selecting the most appropriate penalty from out of the range of penalty available that can be imposed, having regard to the nature, content and gravity of the default. Unless the disciplinary authority reaches the conclusion that having regard to the nature, content and magnitude of the fault committed by the employee concerned, it would be absolutely unsafe to retain him in service, the maximum penalty of dismissal cannot be imposed. If a lesser penalty can be imposed without seriously jeopardizing the interest of the employees the disciplinary authority cannot impose the maximum penalty of dismissal from service. He is bound to ask the inner voice and rational faculty why a lesser penalty cannot be imposed.
6. It cannot be over looked that by and large it is because the maximum penalty is imposed and total ruination stares one in the eyes that the employee concerned is obliged to approach the court and avail the costly time-consuming machinery to challenge in desperation the order passed by the disciplinary authority. If a lesser penalty was imposed, he might not have been obliged to take recourse to costly legal proceedings which result in loss of public time and also result in considerable hardship and misery to the employee concerned.
7. When the disciplinary proceedings end in favour of the employee, the employer has often to pay back wages say for about 5 years without being able to take work from the employee concerned. On the other hand, the employee concerned would have had to suffer economic misery and mental torture for all these years. Even the misery of being obliged to remain idle without work would constitute an unbearable burden. And when the curtain drops every one is left with a bitter taste in the mouth. All because the extreme penalty of dismissal or removal is imposed instead of a lighter one.
8. Every harsh order of removal from service creates bitterness and arouses feeling of antagonism in the collective mind of the workers and gives raise to a feeling of class conflict. It does more harm than good to the employer as also to the society.
9. Taking of a petty article by a worker in a moment of weakness when he yields to a temptation does not call for an extreme penalty of dismissal from service. More particularly, when he does not hold a sensitive post of trust (pilferage by a cashier or by a store keeper from the stores in his charge, for instances, may be viewed with seriousness). A worker brought up and living in an atmosphere of poverty and want when faced with temptation, ought not to, but may yield to it in a moment of weakness. It cannot be approved, but it can certainly be understood particularly in an age when even the rich commit economic offences to get richer and do so by and large with impunity (and even tax evasion or possession of black money is not considered to be dishonorable by and large). A penalty of removal from service is therefore not called for when a poor worker yields to a momentary temptation and commits an offence which often passed under the name of kleptomania when committed by the rich.
15. Keeping in view the above observations which have taken into consideration all aspects of the punishment particularly the extreme penalty of the dismissal, I hold that the punishment of the dismissal from service was uncalled for and unjustifiable. Since the petitioner's date of superannuation is 31.05.2013, the order of dismissal from service is converted into voluntary retirement with no benefits subsequent to the date of dismissal.
16. In the result, the dismissal order dated 05.01.1999 marked as Ex.M-7 is set aside and the petitioner shall be

deemed to have been retired from service under VRS (Golden Shake Hand Scheme) with effect from 05.01.1999. The petitioner shall be paid all the consequential benefits thereof. However, he is not entitled to any benefits subsequent to the date of his dismissal from service.

Typed to my dictation, corrected and pronounced by me in the open Court on this the 18th day of March, 2014.

G. V. KRISHNAIAH, Chairman-cum-Presiding Officer

Appendix of Evidence

Witnesses Examined

For workman:-
-Nil-

For Management:—
-Nil-

EXHIBITS

For workman :—

Ex.W-1 Dt. 05-01-1999 Dismissal order.
Ex.W-2 Dt. 28-10-1998 Reply to show cause notice.
Ex.W-3 Dt. 31-10-2000 Letter issued to the petitioner to attend the interview at the Head Office, Kothagudem on 8-11-2000.

Ex.W-4 Dt. 25-05-2007 Demand notice
Ex.W-5 Dt. 25-04-1998 Charge sheet
Ex.W-6 Dt. 23/26-10-1998 Charge sheet.

For Management :—

Ex.M-1 Dt. 23/26-10-1998 Charge sheet, o/copy
Ex.M-2 Dt. 23-11-1998 Enquiry notice
Ex.M-3 Dt. 25-11-1998 Enquiry proceedings
Ex.M-4 Dt. 26-11-1998 Enquiry report
Ex.M-5 Dt. 25-12-1998 Show cause notice.
Ex.M-6 Dt. 30-12-1998 Reply to show cause notice.
Ex.M-7 Dt. 05-01-1999 Dismissal order.

नई दिल्ली, 9 अप्रैल, 2014

का.आ. 1275.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बी. बी. एम. बी. के प्रबंधन के संबंधित नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 2, चण्डीगढ़ के पंचाट (संदर्भ संख्या 601/2005) को प्रकाशित करती है जो केन्द्रीय सरकार को 09/04/2014 को प्राप्त हुआ था।

[सं. एल-23012/12/1996-आईआर (सी-II)]

बी. एम. पटनायक, डेस्क अधिकारी

New Delhi, the 9th April, 2014

S.O. 1275.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. 601/2005) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Chandigarh as shown in the Annexure in the Industrial Dispute between the management of BBMB and their workmen, received by the Central Government on 09/04/2014.

[No. L-23012/12/1996-IR (C-II)]

B. M. PATNAIK, Desk Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH.

PRESENT:

Sri Kewal Krishan, Presiding Officer.

Case No. I.D. No.601/2005

Registered on 23.8.2005

The General Secretary, BSL Project, Mazdoor Ekta Union, Sunder Nagar, H.P.Petitioner

Versus

1. The Chief Engineer, BBMB (Irrigation Nangal Township) Punjab.
2. The Chief Engineer, BBMB, BSL Sunder Nagar, District Mandi (HP). . . . Respondents

APPEARANCES:

For the Workman : Sh. R.K. Singh Parmar, A.R.

For the Management : Sh. S.K. Goyal and Bhagat Singh Law Officer.

AWARD

(Passed on. 20.3.2014)

Central Government vide Notification No. L-23012/12/96- IR(C-II) Dated 24.6.2005, by exercising its powers under Section 10 Sub-section (1) Clause (d) and Sub-section (2-A) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'Act') has referred the following Industrial Dispute for adjudication to this Tribunal :—

“Whether the action of the management of BBMB represented through the Chief Engineer, BBMB (Irrigation) Nangal Township and Chief Engineer, BBMB, BSL, Sunder Nagar in denying the pay scales of Rs. 830—1560 to Sh. Lashkari Ram skilled labour w.e.f. 1.1.86 as per PSEB pay scales adopted by

BBMB is just and legal? If not, to what relief the workman is entitled to and from which date?"

In response to the notice, the workman submitted statement of claim pleading that he was appointed as skilled labour on 3.3.1983 but was given pay scale of Rs.300-430/- instead of Rs.325-495/-. That the respondent management has adopted the pay scale of Punjab Irrigation and the workman was not given the pay scale of Rs.830-1560/- w.e.f. 1.1.1996 and of Rs.810-1440 from 1.1.1986 onwards. That he is entitled to the pay scales and the arrears arising therefrom.

The respondent management filed written reply pleading that pay scales has been allowed by the respondents on the pattern of PSEB with requisite modifications and accordingly the workman was given the pay scales. That the pay scale of Rs.810-1440/- is not admissible to him.

Today the case was fixed for arguments. The A.R of the workman made statement for not pressing the reference at present.

Since, the authorized representative of the workman did not press the reference and therefore it is held that the workman is not entitled to any relief and the reference is accordingly answered against him. Let hard and soft copy of the award be sent to the Central Government for further necessary action.

KEWAL KRISHAN, Presiding Officer

नई दिल्ली, 9 अप्रैल, 2014

का.आ. 1276 .—औद्योगिक विवाद अधिनियम, 1947(1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बी. बी. एम. बी. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 2, चण्डीगढ़ के पंचाट (संदर्भ संख्या 225/2005) को प्रकाशित करती है जो केन्द्रीय सरकार को 09/04/2014 को प्राप्त हुआ था।

[सं. एल-23012/72/2004-आईआर (सीएम-II)]

बी. एम. पटनायक, डेस्क अधिकारी

New Delhi, the 9th April, 2014

S.O. 1276.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 225/2005) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Chandigarh as shown in the Annexure in the Industrial Dispute between the management of BBMB and their workmen, received by the Central Government on 09/04/2014.

[No. L-23012/72/2004-IR (CM-II)]

B. M. PATNAIK, Desk Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH.

PRESENT :

Sri Kewal Krishan, Presiding Officer.

Case No. I.D. No.225/2005

Registered on 3.8.2005

Sh. Gawanoo Ram, S/o Sh. Phithu Ram, C/o Sh. Bhagat Ram, Village Samkal, P.O Uppal Bhali, Tehsil Sunder Nagar, Mandi (HP). Petitioner

Versus

The Chief Engineer, BSL Project, Sunder Nagar Township, District Mandi (HP), Mandi. Respondents

APPEARANCES :

For the workman : Sh. R.K. Singh Parmar, A.R.

For the Management : Sh. Ravinder Rana, Law Officer.

AWARD

Passed on- 20.3.2014

Central Government vide Notification No. L-23012/72/2004-IR(CM-II)) Dated 7.7.2005, by exercising its powers under Section 10 Sub Section (1) Clause (d) and Sub Section (2-A) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'Act') has referred the following Industrial dispute for adjudication to this Tribunal :—

“Whether the demand of Sh. Gawanoo Ram for reinstatement in the services of BBMB, Sunder Nagar is legal and justified? If so, to what relief the concerned workman is entitled and from which date?”

In response to the notice, the workman submitted statement of claim pleading that he worked from 1964 to 1984 on work charge basis with BBMB, Sunder Nagar. He was given an assurance that he would be taken back and was ultimately engaged in the year 1991 on daily wage basis where he continued up to July 1995 when his services were again terminated. That he had completed 240 days of service in a year and the provisions of the Act were not complied with. That a writ petition was filed before the Hon'ble High Court of Himachal Pradesh and Others in 1995 and due to the stay granted by the Hon'ble High Court, he again worked for 14 months. The Hon'ble High Court ordered that the workers who had completed 240 days of continuous service be reinstated. But the management counted the days of the workman as 230 days

and was not re-employed. That the action of the management is illegal.

Respondent management filed written reply controverting the averments and pleaded that Beas Construction Board and BBMB are different establishments and the workman may have worked with Beas Construction Board. That the workman also raised a dispute which was decided against him. That on the directions of the Hon'ble High Court, the representation made by the workman was considered and rejected.

Today the case was fixed for evidence of the workman who did not lead any evidence despite availing several opportunities. Today the authorized representative of the workman made statement to withdraw the reference at the present. Thus, no evidence has been led by the workman in support of his assertions. Being so, it cannot be said that the demand of the workman made under the reference is legal and justified and he is not entitled to any relief. Accordingly the reference is answered against the workman. Let hard and soft copy of the award be sent to the Central Government for further necessary action.

KEWAL KRISHAN, Presiding Officer

CORRIGENDUM

New Delhi, the 16th April, 2014

S.O. 1277.—The Reference No. mentioned in the second line of the notification of even number dated 07-02-2014 may be read as Misc. Application No. 01 of 2005 instead of Ref. 01/2005.

[No. L-39025/01/2010-IR (B-II)]

RAVI KUMAR, Section Officer

नई दिल्ली, 17 अप्रैल, 2014

का.आ. 1278 .—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार वेस्टर्न कोलफील्ड्स लिमिटेड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 11/2011) को प्रकाशित करती है जो केन्द्रीय सरकार को 17/04/2014 को प्राप्त हुआ था।

[सं. एल-22012/18/2011-आईआर (सीएम-II)]

बी. एम. पटनायक, डेस्क अधिकारी

New Delhi, the 17th April, 2014

S.O. 1278.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 11/2011) of the Central Government Industrial Tribunal-cum-Labour Court, Nagpur as shown in the Annexure in the Industrial Dispute between the management of Gondegaon open

cast Mines Godegaon Project, Tq. Western Coalfields Ltd. Nagpur Area, Kasturba and their workmen, which was received by the Central Government on 17/04/2014.

[No. L-22012/18/2011-IR (CM-II)]

B. M. PATNAIK, Desk Officer

ANNEXURE

**BEFORE SHRI J.P. CHAND, PRESIDING OFFICER,
CGIT-CUM-LABOUR COURT, NAGPUR**

Case No. CGIT/NGP/11/2011

Date: 04.04.2014.

Party No.1(a) : The Supdt. Of Mines/ Manager, WCL, Gondegaon O/C Mines, Gondegaon Project, Tq. Parseon, Distt.-Nagpur. (MS)

Party No. 1(b) : The chief General Manager., WCL, Nagpur Area, Kasurba Nagar, Jaripatka, Nagpur (MS)

Versus

Party No.2 : Shri Nareshsingh S/o Hawaldar Singh, R/O 20/184, Kamptee Colony, Naya Bazar, P.O. : Kamptee Colony, Distt.- Nagpur (MS)

AWARD

(Dated: 04th April, 2014)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of Gondegaon Open Cast Mines Godegaon Project and their workman, Shri Nareshsingh for adjudication, as per letter No.L-22012/18/2011-IR (CM-II) dated 11.05.2011, with the following schedule :—

"Whether the action of the management of Gondegaon Open Cast Mine of WCL in terminating the services of Shri Nareshsingh S/O Hawaldar Singh Foreman (Mech) w.e.f. 25.10.2009 is justified, legal and proper? To what relief the concerned workman is entitled?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the workman, Shri Nareshsingh, ('the workman' in short), filed the statement of claim and the management of WCL ("Party No. 1" in short) filed their written statement.

The case of the workman as presented in the statement of claim is that he was in the employment of party No.1 as a Foreman (Mechanic) at Gondgaon Open Cast Mine having been appointed as such, on and from 02.02.1973 and his service record was absolutely clean and unblemished and he was served with the charge sheet by the party No.1(a), the Superintendent of Mines/Manager, Gondgaon Open Cast Mine dated 04.08.2008 on the allegations of giving false information in respect of the name of his father, while securing the employment in WCL and he submitted his reply to the charge sheet on 09.08.2008 denying the allegations and in all the documents issued by party No.1, starting from June, 1973, which was before submission of the charge sheet, his father's name was mentioned correctly as Hariprashad Singh and there was no suppression of any material facts, while securing employment by him and on or about 23.11.2006, he had also submitted an affidavit before the party No.1 for correction of his name in the service book and such facts clearly show that there was never any suppression of any information by him and in spite of the same, the farce of a departmental enquiry was initiated by the party No.1 by appointing the Enquiry Officer on 06.07.2009 and after conducting the departmental enquiry, the termination order dated 25.10.2009 was passed and the order of termination is wholly illegal, bad in law and amounts to unfair labour practice and victimization and such order was issued in colourable exercise of employer's right and while issuing the order of termination, his past service record was not considered and there was no application of mind and the punishment is shockingly disproportionate and party No.1 issued the order of punishment at the verge of his retirement and the charges levelled against him were not at all proved and the appeal preferred by him were not at all proved and the appeal preferred by him against the order of punishment was not considered and disposed of by the appellate authority, in spite of his approach, so he raised the dispute and from the date of his termination, he is not gainfully employed.

The workman has prayed to quash and set aside the impugned order of termination dated 25.10.2009 and to direct the party No.1 to give all monetary benefits including the wages and retirement benefits to him, as his date of retirement was 30.06.2011.

3. The party No.1 in the written statement has pleaded inter-alia that the service record of the workman was not clean and unblemished and the workman at the time of entering into the service itself had played fraud with it by submitting his false name, which itself is a major misconduct and the workman was served with the charge sheet to which, he submitted his reply and as the reply was not found satisfactory, departmental enquiry was conducted against the workman in a fair and proper manner, by observing the principles of natural justice and after completion of the enquiry, the workman was issued with

the second show cause notice and the same was duly replied by the workman and on the basis of the enquiry report and admission of the workman, the disciplinary authority terminated the services of the workman by order dated 25.10.2009 and on bare perusal of the statement of claim, it can be found that the workman has not at all challenged the legality and fairness of the departmental enquiry conducted against him and in absence of the challenge to the fairness of the enquiry, the preliminary issue is required to be answered in its favour. The party No.1 has further pleaded that the workman has specifically admitted that at the time of his appointment, his name was recorded as "Naresh Singh Hawaldar Singh" and the workman has tried to place reliance on a document issued by CMPF office and it has no control or role in the office of CMPF and therefore, the document issued by CMPF is immaterial and the identity card issued to the employees are required to be filled in by the employees themselves and to become member of the Provident Fund, an employee has to submit an application himself and it has no control over the office of the Provident Fund and though the workman tried to make out a case that in the year 1973 itself, he came to know about the wrong recording of his name in the service record as Naresh Singh Hawaldar Singh in place of "Naresh Singh Hariprasad Singh" and he asked the officers to correct the same, he has no proof of the same and if the workman knew about the wrong recording of his name since 1973, then, what prevented him till 2006, to file application for correction of his name and though the workman was time and again promoted and transferred by way of written orders, at no point of time, he had taken any objection about wrong recording of his name and one Joginder Singh lodged a complaint dated 18.01.2008 with it regarding fraud played by the workman and in order to verify the correctness of the complaint, it lodged a police complaint and the police authorities after investigation found that the workman fraudulently obtained employment and the workman is not entitled to any relief.

4. In the rejoinder, the workman has pleaded that the enquiry initiated against him is not fair and proper and as such, the issue regarding fairness of the enquiry and perversity has to be decided.

5. As this is a case of dismissal of the workman from services, after holding a departmental enquiry, the validity of the departmental enquiry was taken as a preliminary issue for consideration and by order dated 06.03.2014, the departmental enquiry conducted against the workman was held to be legal, proper and in accordance with the principles of natural justice.

6. At the time of argument, it was submitted by the learned advocate for the workman that the real name of the workman is Naresh Singh S/o. Hariprasad Singh and he did not play any fraud or give any false information for securing the employment and in one document of the

month of June, 1973 of the party No.1, his correct name was mentioned at serial No.11 and in the identity card issued in the year 1975 also, his name was mentioned as Naresh Singh S/o. of Hariprasad Singh and in the record of Provident Fund pass book also, the name of the workman was recorded as Naresh Singh S/o. Hariprasad Singh and though the charge levelled against the workman was not proved, the enquiry officer wrongly held the charges to be proved against the workman and the enquiry officer failed to consider the documents and evidence produced in the enquiry and the findings of the enquiry officer are against the entire evidence on record of the enquiry and are perverse and as on such perverse findings, the order of punishment has been passed against the workman, the same is liable to be quashed and set aside. It was further submitted by the learned advocate for the workman that the punishment of termination of the services of the workman is shockingly disproportionate considering the gravity of the charge levelled against him and on that ground also, the punishment is liable to be set aside and the workman was entitled for reinstatement in service with continuity and full back wages, but as the date of the retirement of the workman on superannuation was 30.06.2011, he is entitled all monetary benefits including wages and retirement benefits, from the date of his termination till the date of his retirement i.e. 25.10.2009 to 30.06.2011.

In support of the submissions, the learned advocate for the workman has placed reliance on the decision reported in AIR 1999 SC-912 (Regional Manager, Bank of Baroda Vs. Government Industrial Tribunal).

7. Per contra, it was submitted by the learned advocate for the party No.1 in the written notes of argument that at the time of appointment, the workman submitted his name as Naresh Singh Hawaldar Singh and on the basis of the same, his name was recorded as Naresh Singh Hawaldar Singh by party No.1 in all service records including statutory records, required to be maintained as per the provisions of Mines Act and during the service tenure of the workman, number of correspondence were exchanged in between the workman and party No.1 and in all such correspondence, the name of the workman was mentioned as Naresh Singh Hawaldar Singh and at no point of time, the workman raised any objection as to the effect that this actual name is Naresh Singh Hariprasad Singh and not Naresh Singh Hawaldar Singh and an enquiry was conducted by the police in this regard and a report was submitted and after submission of the police report, the workman came up with a new story that his name is Naresh Singh Hariprasad Singh alias Ramnaresh Singh Hariprasad Singh and when the workman was not the son of Hawaldar Singh, it is not understood as to on what basis, he accepted the appointment order meant for Naresh Singh Hawaldar Singh and subsequent promotions and it is clear from all these facts that the workman played fraud

upon the party No. 1 for the purpose of securing appointment. It was further submitted by the learned advocate for the party No.1 that at the time of appointment of the workman, an employee, Hawaldar Singh by name had expired and his legal heirs were to be given compassionate appointment and from the said facts, it can be safely presumed that the workman might be aware of the said facts and therefore, with an intention to play fraud in securing employment, claimed himself as the son of the said Hawaldar Singh and though this is not the case of party No.1, the workman himself has created such doubt in his cross-examination and for that the reference is liable to be answered in the negative and against the workman.

8. As already mentioned earlier, the departmental enquiry conducted against the workman has already been held to be legal, proper and in accordance with the principles of natural justice.

It is well settled that in a case where there is no defect in the procedure in the course of domestic enquiry into the charges for misconduct against an employee, the Tribunal can interfere with an order of dismissal, where the finding is perverse or where there is no prima facie case. So, keeping in view, the principles as mentioned above, now, the present case in hand is to be considered.

9. Perused the record including the pleading of the parties and all relevant documents produced in connection with the departmental enquiry and also considered the submissions made by the learned advocates for the parties.

The workman was charge sheeted under clause 26.09 of the certified standing order. Clause 26.09 read as follows :—

“Giving of false information regarding one’s name, age, father’s name, qualification, in connection with his employment.”

It is clear from the wordings of clause 26.09 that the act of giving of false information by an employee amounts to misconduct under clause 26.09 only when, he gives false information regarding his name, father’s name, age, and qualification etc. to get an employment in WCL.

The allegations as mentioned in the charge sheet submitted against the workman are that he gave false information regarding his name and father’s name to get the employment. The allegations made in the charge sheet prima facie appear to be not true, as because it is clear from the documents produced by the party No.1 that initially the workman was appointed as a Badli category-I on w.e.f. 02.02.1973 and he was regularized as a general mazdoor in category-I with effect from 23.01.1974. Admittedly, in most of the records and registers of the party No.1 including the service book and Form ‘B’ register, the name of the workman has been mentioned as Naresh

Singh S/o. Hawaldar Singh, even though the real name of the workman is Ram Naresh S/o. Hariprasad Singh. However, from the document submitted by the party No.1 in June, 1973 to the Coal Mines Provident Fund authority, it is found that the name of the workman has been mentioned as Naresh S/o. Hariprasad. It is not the case of the party no.1 that the workman was given employment as he was the son of Hawaldar Singh. It is also not the case of the party no.1 that the workman gave the false information by producing any document. There is also no evidence on record that the workman gave oral information regarding his name and his father's name for claiming employment and on the basis of such false information, employment was given to the workman and entries regarding the name of the workman and his father's name were recorded in the concerned registers of party no.1. It is the consistent plea of the workman in his show cause and evidence in the enquiry that as he noticed his name and his father's name not to have been correctly noted in the documents of WCL, he brought it to the notice of the authority of party no.1, as a result of which, in the document of CMPF, the correct name of his father was mentioned and in 2006 also, he had submitted an affidavit for correction of the wrong recording of his father's name. Such plea of the workman was not challenged in the enquiry. On perusal of the materials on record of the enquiry, it is found that the findings of the enquiry officer are against the evidence on record of the enquiry and therefore perverse. As the punishment of termination of the services of the workman was based on such findings, the same cannot be sustained. Accordingly, the order of punishment of termination of the services of the workman is quashed and set aside.

In view of the setting aside of the order of termination, even though, the workman should have been entitled for reinstatement in service. However, it is clear from his pleadings that the due date of his retirement on superannuation was 30.06.2011. So there is no question of reinstatement of the workman in service again. However, the workman is entitled for all monetary benefits including wages and retirement benefits from 25.10.2009 till the suppose date of his retirement on superannuation. Hence, it is ordered :—

ORDER

The action of the management of Gondgaon Open Cast Mine of WCL in terminating the services of Shri Nareshsingh S/O Hawaldar Singh Foreman (Mech) w.e.f. 25.10.2009 is unjustified, illegal and improper. The workman is entitled for all monetary benefits including wages and retirement benefits from 25.10.2009 till the suppose date of his retirement on superannuation. The party no.1 is directed to carry out the award within one month of the date of publication of the award in the official gazette.

J. P. CHAND, Presiding Officer

नई दिल्ली, 17 अप्रैल, 2014

का.आ. 1279.—औद्योगिक विवाद अधिनियम, 1947(1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार महानदी कोलफील्डस लिमिटेड के प्रबंधन के संबद्ध नियोजको और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, भुवनेश्वर के पंचाट (संदर्भ संख्या 20/2008) को प्रकाशित करती है जो केन्द्रीय सरकार को 17/04/2014 को प्राप्त हुआ था।

[सं. एल-22012/251/2007-आईआर (सीएम-II)]

बी. एम. पटनायक, डेस्क अधिकारी

New Delhi, the 17th April, 2014

S.O. 1279.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. 20/2008) of the Central Government Industrial Tribunal-cum-Labour Court, Bhubaneswar as shown in the Annexure in the Industrial Dispute between the management of Kalinga Area of M/s. MCL, Kalinga OCP of M/s. MCL, and their workmen, received by the Central Government on 17/04/2014.

[No. L-22012/251/2007-IR (CM-II)]

B. M. PATNAIK, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT BHUBANESWAR

PRESENT :

Shri J. Srivastava, Presiding Officer, C.G.I.T.-cum-Labour Court, Bhubaneswar.

INDUSTRIAL DISPUTE CASE NO. 20/2008

Date of Passing Award - 12th February, 2014

BETWEEN

1. The General Manager,
Kalinga Area of M/s. MCL,
At./Po. South Balanda, Talcher,
Dist. Angul, Orissa.
 2. The Project Officer,
Kalinga OCP of M/s. MCL,
At./Po. Danara, Dist. Angul, Orissa.
- ... 1 st Party-Managements.

AND

Their workmen represented through the General Secretary, Talcher Coal Mines Employees Union, Qr. No. JIB/16, At./Po. South Balanda, Dist. Angul, Orissa - 759 116

... 2nd Party-Union

APPEARANCES :

Shri N.R. Nayak, Sr. Officer (Personnel).	For the 1st Party- Management
Shri S.P. Pandey, Working President.	For the 2nd Party- Union.

AWARD

A reference has been made by the Government of India in an industrial dispute between the management of Kalinga Area of M/s. MCL and their workmen under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 vide its letter No. L.-22012/251/2007-IR (CM-II) dated 9.5.2008 in respect of the following matter :—

Whether the demand of the Union regarding promotion of their member workmen namely S/Shri Hira Singh, Krishna Ch. Swain, Satnam Singh & Ajay Moharana who have joined as Dumper-Operator Trainees to get promotion as per the cadre scheme prevalent in the organization from the date from which they are actually eligible and entitled for career wages, is legal and justified? To what reliefs are the workmen concerned entitled?

2. The 2nd Party-Union espousing the cause of the workmen has filed its statement of claim in which it has been alleged that S/Shri Hira Singh, Krishna Ch. Swain, Satnam Singh and Ajay Moharana were initially appointed as Category-1 Mazdoor except Shri Krishna Ch. Swain, who was security guard in MCL. They were working in Nandira Colliery and other places of MCL. In the year 2001, they all appeared in interview for the post of Dumper Operator (Tr.). They all were selected for the same and posted in Central work shop as such. Again they all were transferred to Kalinga OCP, now renamed as Balaram OCP in the same post and joined there on 17.9.2001. They all were posted as Dumper Operator (Tr.) Category-III on 24.9.2001 in their previous scale of pay. They all were promoted to the post of Dumper Operator (Tr.) Category-V with effect from 1.2.2001 as per Office Order No. 939 dated 31.1.2004 and remained in the, said post till 28.2.2006. The 2nd scheme for Dumper Operators as adopted by MCL vide letter No. 744, dated 9.12.1995 was implemented as career growth scheme, extract of which has been quoted under Para-4 of the Statement of claim. Prior to the second scheme there was another scheme circulated vide Circular No. 1 dated 2.1.1978 for Dumper Operator, extract of which has been quoted under Para-6 of the statement of claim. As per first scheme a Dumper Operator was getting promotion in the post of Dumper Operator Grade-1 after completion of three years from training date irrespective of sanction of post. The reason was that these Dumper Operators were working in 35/50 tonne capacity of dumpers which was meant for Dumper Operator, Grade-I/Senior Dumper Operators and they worked in such capacity for

more than 240 days of operating higher capacity of machines. As per second scheme the workman goes to the post of Dumper Operator Grade-1 after working for four and half years from training date to the said post of operating of Dumpers of 35/50 tonne capacity. The MCL Management has unilaterally issued a letter dated 9.12.1995 (2nd scheme) in the name career growth scheme for Dumper Operators violating section 9-A of the Industrial Disputes Act, 1947. The earlier scheme of 2.1.1978 had also not any mention about the availability of sanctioned post for promotion/placement, but it implemented in letter and spirit and placed/promoted training Dumper Operators to the post of Dumper Operator, Grade- I after completion of three years works in the dumpers from training date. But in the case of 2nd scheme the MCL Management did not follow the above circular dated 2.1.1978. They kept the training operator for years together as trainee without trainer, then placed them in Category- V and kept them for years together violating the agreed decision. The Operating Dumpers belong to excavation cadre, not Electrical and Mechanical cadre in short known as E & M cadre. Since the Dumper Operators were all along working from training date without trainer with 35/50 tonne capacity of dumpers of Grade-I/Senior Dumper Operator as a regular employee to give production it was the scheme so prepared to fit those dumper operators in the post of Dumper operator Grade-I as above. Hence there is no need of sanctioned post to promote/place them in the post of Dumper Operator, Grade-I. Since they all were working in the higher posts for more than 240 days a year, it needs only their promotion/regularization in the post of Grade-1/Group-B of operating 35/50 tonne capacity of dumpers continuously. But the Management was giving promotion to the Dumper Operators up to the post of Dumper Operator, Grade-I at its will. The 1st Party-Management is also not paying the real wages as applicable to them for operating higher capacity of Dumpers. The cadre scheme for Dumper Operators was adopted by circular No. 191, dated 31.8.2007 which has been reproduced in Para-II of the statement of claim': The Dumper Operators have been promoted up to the post of Dumper Operator, Grade-C i.e. Grade-II after serving seven years, five months and six days. But they have not yet reached to the post of Dumper Operator, Grade-I, Therefore they should get their promotion/placement as Dumper Operator (Trainee) Category-I from 24.9.2001 to 23.9.2002 as per circular dated 2.1.1978. They should also be promoted/placed as Dumper Operator Grade-C/Grade-II on 24.9.2003 and be given the difference of wages for the aforesaid period. They should also be promoted/placed in the post of Dumper Operator, Grade-I with effect from 24.9.2005).

3. The 1st Party-Management No. 1 and 2 have filed a joint written statement in which they have alleged that the disputant workmen after transfer from CWS (Exca.), Talcher joined erstwhile Kalinga area now named as

Hingula area on 17.9.2011. Thereafter they were posted in erstwhile Kalinga OCP now named as Balram OCP on 21.9.2001 to work as Dumper Operator (Trainee). They completed one year training by 23.9.2002, but their promotion could not be considered as there were no vacant posts in Dumper Operator, Category-V. Subsequently on availability of posts in the Manpower Budget of 2003-04 they were promoted with effect from 1.2.2004. The trainee operators who were to undergo training at various places till completion of their training are not entitled for heavy duty operational allowance during their training period. On being promoted to the post of Dumper Operator (TR) Category- V they were allowed to draw heavy duty operation allowance @ 12.5% of their existing basic pay for the days of operating higher capacity machines with effect from 1.9.2004. The disputant workmen were promoted to the post of Dumper, Operator (Exca), Category/Grade-D with effect from 1.3.2006 and subsequently promoted to the post of Dumper Operator (Exca.) Category/Grade-C with effect from 9.5.2008. The claim of the Union that the disputants should be promoted as per Circular dated 2.1.1978 is devoid of merit and not acceptable.

4. The 2nd Party-Union filed rejoinder to the written statement of the 1st Party-Management and reiterated the points made in the Claim Statement. It further stated that there does not exist any clause in both the circulars of 2.1.1978 and 9.12.95 that vacant posts are required to allow promotion to the Dumper Operator, Grade-I from trainee Operating as a full fledged Dumper Operator with higher capacity of Dumper then their designation are eligible to get heavy duty allowance as per the existing circular of the Company.

5. On the pleading of the parties following issues were framed.

ISSUES

1. Whether the demand of the Union regarding promotion of their member workmen namely S/Shri Hira Singh, Krishna Ch. Swains, Satnam Singh and Ajay Moharana who have joined as Dumper Operator Trainees to get promotion as per the cadre scheme prevalent in the organization from the date from which they are actually eligible and entitled for career wages is legal and justified?
2. To what reliefs are the workmen concerned entitled?

6. On behalf of the 2nd party-Union the disputant Shri Satnam Singh has been examined as W.W.-1 and reliance is placed on two documents marked as Ext.-1 and 2. On behalf of the 1st Party-Management Shri Radha Mohan Panda has been examined as M.W.-1 and one document marked as Ext.-A has been relied.

FINDINGS

ISSUE NO. 1

7. The 2nd Party-Union has claimed promotional benefits as per circular dated 2.1.1978 which has been marked as Ext.-2. According to it the disputant workmen should get their promotion/placement as Dumper Operator (Tr.) Category-I from 24.9.2001 to 23.9.2002 and after successful training, though not imparted to them, they should be promoted/placed as Dumper Operator Grade-C/ Grade-II on 24.9.2003 and be allowed differential wages of Category-I and Grade- II for one year after completion of one year service as Dumper Operator Grade- II and thereafter be promoted/placed as Dumper Operator, Category-I with effect from 24.9.2005.

8. The contention of the 1st Party-Management is 'that the circular dated 2.1.1978 is not applicable to the disputant workmen as they were not in service till the new circular of 9.12.1995 came into force. All the disputants except Shri Hira Singh joined their services after 1995 and they were selected as Dumper Operator (trainee) Category-V with effect from 20.9.2001. Shri Hira Singh earlier to his joining as Dumper Operator (trainee) was mechanical helper, Cat.-II. Hence after coming into operation of circular dated 9.12.1995, circular dated 2.1.1978 became non-operative. Therefore the claim of the Union to get promotion on the basis of circular dated 2.1.1978 is not sustainable. As such relief claimed in this regard cannot be allowed to the disputant workmen. W.W.-2 the disputant Shri Satnam Singh has also accepted in his evidence before this Tribunal that "Ext. -1 is the career growth and training scheme for Dumper Operator in excavation Category pay scales". Then he again admitted in his cross examination that his selection was made on the basis of circular of the year 1995. This admission rests this part of the dispute raised in this case.

9. The disputant workmen got their first promotion on the basis of circular dated 9.12.1995 on 31.1.2004 as Dumper Operator (trainee), Category-V. They got their second promotion on 1.3.2006 as Dumper Operator (excv.) Category/Grade-D and then their third promotion on 9.5.2008 as Dumper Operator (excv.) Category/Grade-C.

10. Viewed in the light of above considerations and circular dated 9.12.1995 it is settled that the disputant workmen are not entitled to get their promotion/placement as Dumper Operator (trainee) Category-I from 24.09.2001 to 23.09.2002 and promotion/placement as Dumper Operator, Grade-C from 24.9.2003 as they joined as Dumper Operator, Category-V on 31.3.2004. Likewise they are not entitled to promotion/placement as Dumper Operator, Category-I from 24.9.2005.

11. In circular dated 9.12.1995 marked Ext.-1 the process of appointment/placement of Dumper Operators in excavation Category pay scales has been given. The

applicant desirous of appointment as Dumper Operator should have experience of more than three years in operation Tippers/Trucks and have passed Class-VIII and above and should possess valid heavy driving license. Such candidates may be considered against the vacancies of Tipper/Truck operator trainee and may be appointed as Category-I/II mazdoor initially and put in training on a truck/light vehicle to acquaint himself with maintenance and running conditions. The departmental candidates will continue in their existing category/grade. On successful completion of one year training they shall be tested/screened by Departmental Promotion Committee and on its recommendation they should be promoted/placed as Category-V drivers and shall continue to work as such for one year. The witness Shri Satnam Singh examined on behalf of the 2nd Party- Union has no-where stated in his evidence that the disputant workmen had the required experience and qualification. The above witness has stated in his cross examination that prior to applying for the post of Dumper Operator he was working as Mazdoor Category-I Engine Helper at Central workshop, at Talcher. He gathered experience in driving of trucks and tippers. He has acquired license for driving heavy vehicles. But no documentary evidence of all these facts has been filed on record. M.W.-1 Shri Radha Mohan Panda in his statement before the Court has stated that “these persons did not have the requisite three years of experience in operation of tipper/truck as required in the norms/criteria enunciated by letter No. 744 dated 9.12.1995 which is evident from the fact that shri Hira Singh was mechanical helper, Krishna Chandra Swain was the Security Guard and other two persons were general mazdoors”. He has further stated that these persons were imparted additional training for three years by the Management after they joined as Dumper Operator trainee. M.W.-1 has denied the fact in his cross examination that the workmen were not given training as per circular dated 9.12.1995. As such it cannot be said that the disputant workmen were unnecessarily denied promotion/placement as category- V drivers nearly for two and half years. They were placed/promoted as Dumper Operator (trainee) Category-V on 31.1.2004 nearly after two years and four months. Circular dated 9.12.1995 further requires that after placement/promotion as Category-V drivers they should be sent to CETI/Belpahar Institute for theoretical and practical training for three months and thereafter they will operate Dumpers for 35/50 tonne capacity under the guidance of a trained regular operator for three months. Thereafter they will be sent to CETI institute for testing trial and after passing the said test they will be regularized in the lowest category of Dumper Operator, Category/Group-D. But the disputant workmen were not given these types of training nor sent for testing trial to CETI institute. However they were promoted/placed as Dumper Operator (exca.) Category/Group-D on 1.3.2006. The above circular requires that the Dumper Operator Category/Grade-D shall be placed in

Category/Group-C/Grade-II on completion of one year in Group-D/Grade-III, but the disputant workmen were promoted/placed in Grade-C category on 9.5.2008 i.e. of nearly after two years. In the written statement of the 1st Party-Management it has been stated that since there were no vacant posts in Dumper Operator Category-V on 23.9.2002 their promotion could not be considered in Category-V, but on subsequent availability of posts in the man power budget 2003-04 they were promoted on 1.2.2004. Therefore they are not entitled to any heavy duty operational allowance during the period of training when they have placed as trainee operators. On being promoted to the post of Dumper Operator (Trainee), Category- V they were allowed to draw heavy duty and operational allowance of their existing basic pay for the days of operating higher capacity machines-with effect from 1.9.2004. Nothing has been explained for delay in subsequent promotions. It has been provided in Para-4.1 of circular dated 9.12.1995 that after completion of one year as Dumper Operator Category-II in Group-C they will be paid difference of wages of Grade-I and Grade-II for a period of one year. But the same does not appear to have been paid to the disputant workmen, which should have been paid to them without any delay. The parties at dispute cannot clarify or convincingly show to this Tribunal that placement/promotion in Dumper Operator, Grade-V; Grade-D and Grade-C cannot be made unless the vacancies in the said posts existed. Hence no order regarding placement/promotion in the above posts from the alleged dates can be passed in consonance with the provisions made in the circular dated 9.12.1995. The promotion of the disputant workmen is also due after having put in one year service in Category-C (Grade-II) for the post of Dumper Operator, Grade-I in Group/Category-B in the regular pay scale of excavation category for which the recommendation of duly constituted D.P.C. is needed. The 1st Party-Management is required to constitute the Departmental Promotion Committee in accordance with the departmental rules and consider the promotion in Group/Category-B of the disputant workmen without any further delay.

12. In the above premises it is held that the demand of the Union regarding promotion of the disputant workmen namely Shri Hira Singh, Krishna Chandra Swain, Satnam Singh and Ajay Moharana as per the cadre scheme prevalent in the organization from the date of eligibility and to get career wages is legal and justified. This issue is decided in the affirmative.

ISSUE NO. 2

13. As per the conclusions derived under Issue No. 1 the concerned workmen are entitled to get the relief of differential wages of Grade- I and Grade-II for one year after putting in one year service in Group-C. They shall be also entitled to be considered for promotion/placement from the post of Dumper Operator, Grade-C to Dumper

Operator Group/Category-B by duly constituted D.P.C. and on its recommendation for promotion/placement as such as per circular dated 9.12.1995.

14. The reference is answered accordingly.

Dictated & corrected by me.

JITENDRA SRIVASTAVA, Presiding Officer

नई दिल्ली, 23 अप्रैल, 2014

का.आ. 1280.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार उत्तर रेलवे के प्रबंधन के संबंधित नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, लखनऊ के पंचाट (संदर्भ संख्या 39/2011) को प्रकाशित करती है जो केन्द्रीय सरकार को 23/04/2014 को प्राप्त हुआ था।

[सं. एल-41011/108/2010-आईआर (बी-1)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 23rd April, 2014

S.O. 1280.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 39/2011) of the Central Government Industrial Tribunal-cum-Labour Court, Lucknow as shown in the Annexure in the Industrial Dispute between the management of Northern Railway and their workmen, received by the Central Government on 23/04/2014.

[No. L-41011/108/2010-IR (B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, LUCKNOW

PRESENT:

Dr. MANJU NIGAM, Presiding Officer

I.D. No. 39/2011

Ref. No. L-41011/108/2010-IR(B-I) dated: 14.03.2011

BETWEEN

Mandal Sangathan Mantri Uttar Railways Karmchhari Union 283/63, KH, Gadi Kannora (Premwati Nagar) Manak Nagar, Lucknow – 16 (Espousing cause of Shri Makbul Ahmed)

AND

Senior Divisional Railway Manager (Personnel) Northern Railway Hazratganj Lucknow.

AWARD

1. By order No. L-41011/108/2010-IR(B-I) dated: 14.03.2011 the Central Government in the Ministry of

Labour, New Delhi in exercise of powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between Mandal Sangathan Mantri, Uttar Railways Karmchhari Union, 283/63, KH, Gadi Kannora (Premwati Nagar), Manak Nagar, Lucknow and the Senior Divisional Railway Manager (Personnel), Northern Railway, Hazratganj, Lucknow for adjudication.

2. The reference under adjudication is:

“WHETHER THE DEMAND OF UNION REGARDING PLACING SHRI MAKBULABMED S/O SHRI ABDUL RAUF, ASSISTANT LOCO PILOT, LOCO-SHED, LUCKNOW IN THE PANEL OF THE YEAR 1983-84 ABOVE HIS JUNIORS, IS LEGAL AND JUSTIFIED? TO WHAT RELIEF THE WORKMAN IS ENTITLED?”

3. The union viz. Uttar Railways Karmchhari Union raised the present industrial dispute claiming inclusion in the panel for the year 1983-84 above his junior fellows. The management of the railways denied the claim by filing a detailed written statement, stating therein that it is provided under Rules that the employee cannot claim the seniority from the date of his actual engagement rather the same shall be reckoned from the date of their regular appointment. Therefore, it prayed that the claim of the union is liable to be rejected without any benefit to the workman concerned.

4. The workman's union, in its rejoinder, reiterated its contentions already made in the statement of claim. The parties filed documentary evidence in support of their respective claim and the date was fixed for evidence of the workman's union. When the workman's union failed to file any evidence in spite of several opportunities being afforded, the management was called upon to file the evidence in support of their case. The authorized representative of the management made an endorsement that since 'the worker has not filed evidence so the management will not file evidence'. Accordingly, the case was fixed for arguments.

5. Heard oral arguments of the authorized representatives of the parties and scanned entire evidence available on file.

6. Initial burden was on the workman's union to prove their pleading with corroborative oral evidence; but it has utterly failed in doing so. In 2008 (118) FLR 1164 M/s. Uptron Powertronics Employees' Union, Ghaziabad through its Secretary vs. Presiding Officer, Labour Court (II), Ghaziabad & others, Hon'ble High Court relied upon the law settled by the Apex Court in 1979 (39) FLR 70 (SC) Sanker Chakravarti vs. Britannia Biscuit Co. Ltd., 1979 (39) FLR 70 (SC) V.K. Raj Industries v. Labour Court and others,

1984 (49) FLR 38 Airtech Private Limited v. State of U.P. and others and 1996 (74) FLR 2004 (All.) Meritech India Ltd. v. State of U.P. and others; wherein it was observed by the Apex Court :

“that in absence of any evidence led by or on behalf of the workman the reference is bound to be answered by the Court against the workman. In such a situation it is not necessary for the employers to lead any evidence at all. The obligation to lead evidence to establish an allegation made by a party is on the party making the allegation. The test would be, who would fail if no evidence is led.”

7. In the present case the workman's union has not substantiated its case by way of filing any oral evidence. Mere pleadings are no substitute for proof. It was obligatory on the part of workman's union to come forward with the case that the workman was deprived of the panel for year 1983-84, for which he was eligible; but the workman's union has failed to forward any evidence in support of its claim either oral or documentary. As such, there is no reliable material for recording findings that the alleged action of the management of Northern Railway in denying the workman in the panel of the year 1983-84 is illegal and unjustified.

8. Accordingly, the reference is adjudicated against the workman's union; and as such, I come to the conclusion that the workman, Makbul Ahmad is not entitled to any of the relief claimed.

9. Award as above.

LUCKNOW.

31st March, 2014.

Dr. MANJU NIGAM, Presiding Officer

नई दिल्ली, 23 अप्रैल, 2014

का.आ. 1281.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार उत्तर रेलवे के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, लखनऊ के पंचाट (संदर्भ संख्या 36/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 23/04/2014 को प्राप्त हुआ था।

[सं. एल-41012/167/2002-आईआर (बी-1)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 23rd April, 2014

S.O. 1281.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 36/2003) of the Central Government Industrial Tribunal-cum-Labour Court, Lucknow as shown in the Annexure in the Industrial Dispute between the management of Northern Railway

and their workmen, received by the Central Government on 23/04/2014.

[No. L-41012/167/2002-IR (B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, LUCKNOW

PRESENT :

Dr. MANJU NIGAM, Presiding Officer

I.D. No. 36/2003

Ref. No. L-41012/167/2002-IR(B-I) dated: 05.03.2003

BETWEEN

The Divisional Secretary Rail Mazdoor Union, II-50 J. C.P.H. Colony N. Rly., Charbagh Lucknow (U.P.) – 1 (Esposusing cause of Shri R.K. Pandey)

AND

The Dy. Chief Engineer (Bridge Workshop) Northern Railway Charbagh, Lucknow.

AWARD

1. By order No. L-41012/167/2002-IR(B-I) dated: 05.03.2003 the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between the Divisional Secretary, Rail Mazdoor Union, II-50 J. C.P.H. Colony, N. Rly., Charbagh, Lucknow and the Dy. Chief Engineer (Bridge Workshop), Northern Railway, Charbagh, Lucknow for adjudication.

2. The reference under adjudication is:

“KYA UTTAR RAILWAY, BRIDGE WORKSHOP, LUCKNOW DWARASHRI R.K. PANDEY, M.C.C. KO UNION GATIVIDHIYON MAIN LIPT HONE KE KARAN LUCKNOW SE JALANDR STHANANTARAN KIYA JANA EVAM KARMKAAR KO APNA PAKSH PRASTUT KARNE KA AWSAR DIYE BINA DINANK 04.08.1994 SE 24.8.1999 AVADHI KA VETAN KAAT LIYAJANANAYAYOCHITEVAMNAYAYSANGAT EVAM NAYAYSANGAT HAI? YADI NAHI TO KARMAAR KIS ANUTOSH KO PANE KA ADHIKAARI HAI?”

3. The case of the workman's union, in brief, is that the workman, R.K. Pandey who was branch secretary of the union was served upon a major penalty charge sheet dated 3/4-8-94 in English. The workman requested to furnish the Hindi version of the same. The workman

proceeded on sanctioned sick leave w.e.f. 04.08.94 (A/N). The workman was supplied with the Hindi version of the charge sheet on 08.08.94. It is submitted by the union that during sick leave the workman came to know that he had been transferred from Lucknow to Jalandhar vide order dated 02/08-08-94; but was neither served upon any transfer letter nor transfer pass nor any spare memo. It has been submitted that when he recovered from illness he was not allowed to join then the workman represented for cancellation of his transfer, which was cancelled and was allowed to join his duty on the same post at Lucknow. It has been alleged by the union that the workman was neither allowed to join the duties nor was given any transfer letter nor transfer pass nor any spare memo and deliberately deprived the workman of the wages for the period 04.08.94 to 24.08.99. Accordingly, the workman's union has prayed that the action of the management be declared illegal in not allowing him pay for the period 04.08.94 to 24.08.99; and the workman be held entitled for salary for the period 04.08.94 to 24.08.99 with interest.

4. The management of the railway has denied the claim of the workman by filing its written statement wherein it has been submitted that the workman was transferred from Lucknow to Jalandhar vide order dated 02.08.94 and consequently was spared/relieved vide order dated 04.08.94; and he was also provided journey pass No. 977073 dated 04.08.94 to join his duties at Jalandhar; but he never joined the services on transferred station without any reason, which resulted into issuance of charge sheet dated 24.07.95 for unauthorized absence from duty w.e.f. 04.08.94. It has been submitted that the Inquiry Officer was nominated by the management and the workman did not respond to the several letters of the Inquiry Officer; however, he replied vide dated 27.11.97 and 09.12.97. The management has submitted that the inquiry was conducted by the Inquiry Officer; wherein the workman was afforded all reasonable opportunity to defend himself; but he could not satisfy the Inquiry Officer, who reported the charges to be proved and the competent authority imposed the penalty to treat the period between 04.08.94 to 24.08.99 as leave without pay. The appeal against the punishment order was also rejected by the competent authority. Accordingly, the management has prayed that the claim of the workman's union be rejected being devoid of any merit.

5. The workman's union has filed its rejoinder; wherein it has not brought any new fact apart from reiterating the averments already made by it in its statement of claim earlier.

6. The parties have filed documentary proof in support of their respective cases. The workman has examined himself whereas the management examined Shri D.C. Goyal, Executive Engineer, Northern Railway in support of their case. The parties cross-examined the

witnesses of each other apart from forwarding oral arguments.

7. Heard representatives of the parties and perused entire evidence available on record.

6. The authorized representative of the workman has argued that the workman had been transferred by the management but he was neither provided with the transfer order nor any spare memo nor any journey pass; due to which he could not proceed to his transferred destination and the management did not allow him to join till 24.08.99 at Lucknow. Consequently the management arbitrarily deducted his salary for the period 04.08.94 to 24.08.99, treating him unauthorized absentee.

7. In rebuttal, the management has come up with the case that the workman deliberately did not join the duties at his transfer station in spite of the fact that he was served with the transfer order dated 02.08.94, relieving order dated 04.08.94; and journey pass No. 977073 dated 04.08.94 to join his duties at Jalandhar. But since the workman failed to join the duties. A charge sheet was served to the workman for unauthorized absence and accordingly, on the charges being proved, he was punished with lowering his grade and the period of absence from 04.08.94 to 24.08.99 was treated as leave without pay.

8. I have given my thoughtful consideration to the rival contentions of the parties and scanned the entire evidence available on record in the light thereto.

9. The workman in his evidence has stated that he proceeded on casual leave for 3 ½ days' duly sanctioned by the authorities w.e.f. 04.08.94 (A/N) and during his sick leave he always sent his leave applications along with sick certificate to his from time to time. It was stated that during sick leave the workman came to know that he has been transferred from Lucknow to Jalandhar and thereafter he represented before higher authorities i.e. before Railway Board and Headquarters to cancel the said transfer. The management did not allow him to join. It was also stated that later on, the said transfer order was kept pending vide DO No. E(REP) III/94/6-306(OR) dated 23.12.94. However, he was allowed to join only after cancellation of the transfer order i.e. on 25.08.99.

In rebuttal, the management witness has stated that the workman was transferred on 02.08.94 to Jalandhar; but he did not join there. In the departmental inquiry the workman was found guilty of unauthorized absence from 04.08.94 to 24.08.99 and accordingly, his basic pay was decreased; which was cancelled in the appeal and said period was treated as leave without pay.

10. From the record it transpired that the workman, R.K. Pandey was transferred from Lucknow to Jalandhar. As per version of the management the workman had full

knowledge about it; but according to the workman he received the information of his transfer at a later stage. The management has right to transfer any of its official in view of suitability of the official for smooth function of the administration and the official has no scope to challenge the same unless some malafies is there. The workman's union has come up with the case that the workman's transfer was malafied. It has also come up with the case that the workman has not been served with the transfer order, relieving order or the journey pass to join the duty. Also, it has been pleaded by the workman's union that the workman proceeded on casual leave for 3 ½ days' sanctioned by the authorities w.e.f. 04.08.94 (A/N) followed by the sick leave. Though the management has contended that it had issued the relieving order to the workman on 04.08.94; but there is no document on the record to show that same were served upon the workman.

In rebuttal, the management has come up with the case that the workman was served with the transfer order, relieving orders as well as journey pass; but he did not proceed to join the post at Jalandhar without any rhyme or reason. When he did not join the transfer post, he was served with a charge sheet for unauthorized absence and after affording all opportunities to defend himself was punished for the charges being proved.

11. The schedule of reference, referred to this Tribunal is regarding imposing the penalty of deduction of pay from 04.08.1994 to 24.08.99 without affording any opportunity to put up his defence; and this Tribunal has to confined within the purview of the schedule of reference. In *Municipal Employees' Union & another vs. Secretary (Labour), Government of N.C.T. of Delhi & another* 2001 (89) FLR 360 wherein the Hon'ble Delhi High Court taking terms of reference into consideration has observed that the Industrial Tribunal cannot travel beyond the terms of reference. Terms of reference should invariably encompass the entire dispute between the workman and the management. Accordingly, the issue for adjudication before this Tribunal is as to whether the workman was afforded reasonable opportunity to defend himself before deducting his pay.

12. When the reference is regarding validity of some punitive action of the management, then the onus was on the management to come up with the evidence that the workman was issued the charge sheet for unauthorized absence from 04.08.1994 to 24.08.99 and was afforded all reasonable opportunity to defend himself. In this regard the workman has filed photocopies of the leave applications and medical certificates which go to show that he proceeded on sanctioned CL w.e.f. 04.08.94, followed by a sick leave. On getting well when approached the employers for joining he was not allowed to join. Also, the workman represented the Railway Board and Headquarter Office for cancellation of his transfer, which

resulted into issuance of DO No. E(REP) III/94/6-306(OR) dated 23.12.94; whereby the transfer of the workman was "kept pending till further directions". This goes to show that the operation of the transfer order was stayed or the same was kept in abeyance. The management was under obligation to allow the workman to join him at Lucknow w.e.f. 24.12.94 but the management failed to do so instead and instead allowed the workman to join only on 25.08.99. No explanation or reason has been given at the end of the management as to why the order i.e. DO dated 23.12.94 has not been complied with and why the joining of the workman was delayed for such a long period i.e. up to 25.08.99, even though the transfer order 02.08.94 was stayed vide DO No. E(REP) III/94/6-306(OR) dated 23.12.94. If the management was inclined to take action against the workman then it could have treated him absentee at the most from 04.08.94 to 24.12.94.

Besides when the workman was proceeded on casual leave w.e.f. 04.08.94, there was no occasion for the management to issue the relieving order unless he joins the duties. If the relieving order has been passed or any journey pass has been issued, the management failed to prove that same has been served upon the workman nor the copies of the same has been field before this Tribunal to corroborate its pleadings.

The management has not filed any letter or correspondence, showing institution of Inquiry against him on alleged charges of unauthorized absence or any communication for hearing the workman before any Inquiry or show cause notice before imposing the penalty of deducting the salary of the workman. As per law when the period was absence was proposed to be treated as period of leave without pay; and the workman was going to suffer monetary loss, then the action of the management, imposing penalty without affording him any opportunity for hearing, was illegal.

13. In view of the facts and circumstances, narrated hereinabove, it is crystal clear that though the workman was transferred by the management of railways from Lucknow to Jalandhar but was never served with any relieving order or journey pass to join the duties at transfer station. Also, when the order of transfer dated 02.08.94 had been 'kept pending' vide DO dated 23.12.94 of the Director, Establishment, Railway Board, N. Delhi then the management was supposed to allow the workman to join the services thereafter. Further, the management failed to produce any evidence regarding providing reasonable opportunity to the workman to defend himself and also that alleged order of transfer order dated 02.08.94 and relieving order dated 04.08.94 and journey pass have been served upon the workman in the wake of the fact that the workman proceeded on casual leave sanctioned by the authority, followed by medical leave. Hence, keeping in view the above facts and circumstances, deduction of

salary for the period from 04.08.94 to 24.08.99 without hearing the workman is illegal and unjustified.

14. Accordingly, the reference under adjudication is answered in negative and in favour of the workman's union; and the workman is entitled for salary for the period he was treated as leave without pay i.e. period from 04.08.94 to 24.08.99.

15. The Award as above.

Lucknow
14th March, 2014

Dr. MANJU NIGAM, Presiding Officer

नई दिल्ली, 24 अप्रैल, 2014

का.आ. 1282.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, नागपुर के पंचाट (संदर्भ संख्या 15/2002) को प्रकाशित करती है जो केन्द्रीय सरकार को 04/04/2014 को प्राप्त हुआ था।

[सं. एल-12012/317/2001-आईआर (बी-1)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 24th April, 2014

S.O. 1282.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. 15/2002) of the Central Government Industrial Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the Industrial Dispute between the management of State Bank of India and their workmen, which was received by the Central Government on 04/04/2014.

[No. L-12012/317/2001-IR (B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE

**BEFORE SHRI J. P. CHAND, PRESIDING OFFICER,
CGIT-CUM-LABOUR COURT, NAGPUR**

Case No. CGIT/NGP/15/2002

Date: 28.03.2014.

Party No. 1 : The Asstt. General Manager,
State Bank of India, Region-I,
Zonal Office, S.V. Patel Marg,
Kingsway, Nagpur-440001
(MS).

Versus

Party No. 2 : The Asstt. General Secretary
State Bank of India Staff
Union, C/o. SBI zonal Office,
Kingsway, Nagpur-440001

AWARD

(Dated: 28th March, 2014)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of State Bank of India and their workman, Shri Hiralal Fulsunge, for adjudication, as per letter No.L-12012/317/2001-IR (B-I) dated 18.12.2001, with the following schedule:—

"Whether the action of the management of the Assistant General Manager, State Bank of India, Region-I, Zonal Office, Nagpur in awarding the punishment of dismissal without notice to Shri Hiralal Fulsunge, Ex-Asstt. (Cash & Accts.) w.e.f. 09.10.1999 is justified? If not, to what relief the said workman is entitled?"

2. On receipt of the reference, parties were noticed to file their respective statement of claim and written statement, in response to which, the workman Shri Hiralal Fulsunge, ("the workman" in short) filed the statement of claim and the management of State Bank of India, ("party no.1" in short) filed the written statement.

The case of the workman as presented in the statement of claim is that he was served with the charge sheet dated 24.10.1998 and subsequently, enquiry was conducted by Shri S.W. Bokare, the enquiry officer and after conclusion of the enquiry, he was served with the show cause notice dated 09.07.1999 and he submitted the explanation on 06.08.1999 through the defence representative with a request to take lenient view in deciding the punishment to be imposed. It is further pleaded by the workman that the enquiry was conducted by the enquiry officer with prejudiced mind and biased views and the enquiry officer was non-cooperative with the defence representative and denied fair chance and natural justice to the defence side at various levels and the disciplinary authority also imposed the punishment of "dismissal without notice" of cruel nature to put him in hardship and inconvenience and immediately after his denial of the charges, the presenting officer put questions to him relating to the charges and the same amounted to his cross-examination by the presenting officer and a workman can only be cross-examined by the presenting officer, when the workman examines himself as a witness in his defence and due to such cross-examination, his defence was exposed before presentation of his case and the same amounted to denial of reasonable opportunity and violation of the principles of natural justice and the list of witnesses was given to the defence representative

only at the time of examination of the witnesses and no time was granted to the defence side for studying the witnesses, which was against the principles of natural justice and fair trial and the enquiry was not fair as the enquiry officer, presenting officer and witnesses met in isolation during the lunch time and the said fact shows that the enquiry officer conducted the enquiry in a bias state of mind and the witness no.1 for the management changed his statement twice, while recognizing his initials, therefore the defence representative required to confirm his initials from the day books, but the defence representative was not allowed to verify the records, which was against the principles of natural justice and the defence representative also requested for experts opinion in regard to the initials of the witness no.1 of the management appearing on the exhibits, but such request was declined by the enquiry officer and the defence representative wanted to cross-examine the Branch Manager and P.B.D. initially and when the enquiry officer refused to present the then Branch Manager and PBD in the enquiry, the defence representative had no other alternative but to call them as his witnesses, but they refused to depose as defence witnesses and in an attempt to bring them as defence witnesses, the defence representative tried to submit a letter to the disciplinary authority i.e. the Assistant General Manager, Region-I through the enquiry officer during the enquiry, but the enquiry officer against the principles of natural justice refused to accept the letter and wrongly quoted that the Branch Manager and PBD refused to be witnesses from the defence side and on many occasions, the defence representative was prevented by the enquiry officer and presenting officer to cross-examine the witnesses for the management and from examining the defence witnesses and the defence witness in his cross-examination by the presenting officer clearly stated that the matter was being dealt with by the then Branch Manager, which revealed the fact that there was preliminary report prepared by the then Branch Manager and though the defence representative demanded the said report twice during the course of enquiry, the report of preliminary enquiry was not given to the defence representative, which was against the principles of natural justice.

It is also pleaded by the workman that at the time of personal hearing before the disciplinary authority, he was not allowed to bring his defence representative for defending his case, which was also against the principles of natural justice and the punishment of "Dismissal without notice" imposed on him is shockingly disproportionate and the same is not on a very higher side and is very harsh.

The workman has prayed to quash and set aside the punishment imposed on him and to reinstate him in service with all benefits.

3. The party no.1 in the written statement denying all the adverse contentions raised in the statement of claim has pleaded inter-alia that the workman was working at its Gondia Branch as an Assistant (Accounts) since 11.02.1985 and he was working on savings bank counter from July, 1996 and was doing clerical work on the savings bank counter and the clerical work inter-alia included to receive withdrawals or cheques from the customers coming at his counter for withdrawing the money from their accounts, debiting their account with the amount sought to be withdrawn, sending the withdrawals to the officer concerned officer for authentication of the entries made therein and the cashier was to receive the money deposited by the customers in their respective accounts and since the workman was manning the savings bank counter, he was not supposed to accept any cash from the customer and acknowledged the same on the counter foil of the pay-in-slip and similarly, he was not supposed to authenticate or make his signatures/initials against the entries in the pass-book, since it was to be done by the officers and the workman was not authorized to accept cash receipts from the depositors, between August, 1997 to July, 1998, he unauthorizedly accepted cash from depositors for credit to their savings bank account and unauthorizedly issued counter foils by affixing "cash receipts" stamp of the branch and he did not deposit the cash received from different customers in the bank and misappropriated the same and made unauthorized authenticated credit entries in the pass books of the depositors and also unauthorizedly authenticated the balances by his initials and whenever, a particular depositor was coming to the branch for withdrawing the amount from his account, the workman used to transfer the amount from his overdraft account no. 22/4469 to the depositor's account by transfer voucher, so that the withdrawal presented by the depositor for payment could be passed with the intention that the depositors should not be able to know about the misappropriation of the amount by him and the workman purposefully and with ill intention was not making the entries of the transfer of amount from his account to the depositor's account in the passbook, with the ulterior motive that the depositors should not come to know about his fraudulent acts and when various depositors made written complaints to the Bank against the workman, it came to know about his fraudulent activities and the workman made a large number of fraudulent entries in at least 16 depositor's pass books amounting to Rs. 2,06,000/- approximately and out of such fraudulent entries, the workman transferred various amount from his overdraft account to the depositor's account on different dated amounting to Rs. 1,39,100/- and the balance of Rs. 66,900/- is still to be recovered from the workman and therefore, the workman was suspended w.e.f. 04.08.1998 and he was issued with the charge sheet

dated 24.10.1998 alongwith a detailed statement showing the fraudulent entries made by him in 16 depositor's passbook and the charge sheet was received by the workman on 18.11.1998 and he gave his reply to the charge sheet on 26.11.1998 and the enquiry officer then conducted the enquiry from 17.03.1999 to 06.05.1999 in 10 sittings giving ample opportunity to the workman to defend his case and the enquiry officer submitted his report dated 19.06.1999 to the disciplinary authority and the disciplinary authority then issued a show cause notice dated 09.07.1999 alongwith the enquiry officer's report, proposing the punishment of "Dismissal without notice" for each charge and the workman submitted his reply dated 06.08.1999 to the show cause notice and personal hearing was given to the workman on 09.08.1999 by the disciplinary authority and after considering the relevant materials, the facts of the case and the report of the enquiry officer, the disciplinary authority passed the final order of "Dismissal without notice" for each charge dated 09.10.1999 and the workman preferred on appeal against the final order, but the appeal was dismissed by the appellate authority by order dated 20.05.2000.

The further case of party No.1 is that the workman engaged Shri R.N. Iyer as his defence representative and the first date of the enquiry on 17.03.1999, the charges were read over and explained to the workman and after denial of the charges by the workman, all the documents relied on by the management were provided to the workman and the list of witnesses was also given to the workman on the same day and thereafter, the enquiry was adjourned to the next date and in the enquiry, four depositors, who had made complaint to the bank and the passing officer, Shri D.S. Joshi were examined by the management and they were vigorously cross-examined by the workman and the workman also examined Shri Vinod Rai as a witness in his defence and the workman was given every opportunity to defend himself in the enquiry and all the principles of natural justice were complied with in the enquiry and the enquiry officer has also given justifiable reasons for holding the charges to have been proved against the workman and having regard to the gross misconduct of the workman, it had rightly passed the final order.

It is further pleaded by party No.1 that the witnesses No.1, the passing officer rightly recognize the initials appearing on the various exhibits during the enquiry and there was no necessity to call for the expert's opinion and the enquiry officer rightly rejected the demand of the defence representative in this regard and the workman cannot compel the Bank to produce a particular person as his witness and it was free to examine its witnesses and relevancy of any witness is to be shown, before requesting the enquiry officer to issue notice to any person to be examined as a defence witness and in fact, it was upon the workman to bring any witness in support of his case and

shri M.N. Kriplani, PBD Manager attended the enquiry at the instance of the workman, but he refused to give evidence and as such, the enquiry officer rightly quoted that the then branch manager and PBD manager refused to be the defence witness and the enquiry officer, presenting office and the witnesses did not meet in isolation and the defence representative was never prevented by the enquiry officer to cross-examine the witnesses of the management or to examine the defence witnesses and the workman did not bring the defence representative during the personal hearing and there is also no provision in the Sastry Award to allow the workman to bring his defence representative during the personal hearing and the workman is not entitled to any relief.

4. As this is a case of dismissal of the workman from services, after holding of a departmental enquiry, the fairness or otherwise of the departmental enquiry was taken up as a preliminary issue for consideration and by order dated 08.10.2013, the same was held to be legal, proper and in accordance with the principles of natural justice.

5. At the time of argument, it was submitted by the learned advocate for the workman that the Enquiry Officer conducted the enquiry with prejudiced mind and biased view and the findings of the Enquiry Officer are perverse and the punishment of "Dismissal without notice" imposed against the workman is shockingly disproportionate and the same is on a very higher side and as such, it is necessary to quash and set aside the punishment and the workman is entitled for reinstatement in service with all the benefits.

6. Per contra, it was submitted by the learned advocate for the party No.1 that by order dated 08.10.2013, it has already been held that the departmental enquiry held against the workman is legal, proper and in accordance with the principles of natural justice and the Enquiry Officer has given justifiable reasons for holding the charges to have been proved against the workman and thus, it cannot be held that the findings of the Enquiry Officer are perverse and though the workman was acquitted in the criminal case as per judgment dated 05.09.2008, the same is of no consequence, as the charges in the criminal case and the disciplinary enquiry were not the same and similar and the findings of the Enquiry Officer are based on the materials on record of the enquiry and the same are not perverse and the workman was holding a position of trust, where honesty and integrity were the in-built requirements of functioning and the misconducts committed by the workman are very serious in nature and commission of such grave nature of misconducts has been proved against the workman in a properly conducted departmental enquiry and as such, the punishment imposed against the workman cannot be said to be shockingly disproportionate or harsh and there is no scope for the Tribunal to interfere

with the punishment and the workman is not entitled to any relief.

In support of the contentions, the learned advocate for the party No.1 placed reliance on the decisions reported in AIR 1999 S. C.-1416 (Capt. M Paul Anthony vs. Bharat Gold Mines Ltd.), (2011) 4 SCC 584 (State Bank of Bikaner & Jaipur vs. Nemichand Nalwaya), (2006) 2 SCC-255 (TNCS Corp. Ltd. vs. K. Murabai), AIR 2003 SC-1571 (Chairman & M D, United Commercial Bank vs. P P Kakkar), AIR 2003 SC 1462 (Regional Manager, UPRTC vs. Hoti Lal), (2006) 7 SCC-212 (State Bank of India vs. Ramesh Dinkar Pande), AIR 1996 SC_1556 (Bharst Forge Company Ltd. vs. A.B. Zodgi) and 2010(6) Mh. L. J._309 (General Secretary, G.K> Union vs. Noble Paint & varnish Co. Pvt. Ltd.)

Keeping in view the principles as enunciated by the Hon'ble Apex court in the decisions as mentioned above, now, the present case in hand is to be considered.

7. So far the initiation of the criminal case no.83/2000 against the workman and his acquittal in the same is concerned, it is to be mentioned here that nothing has been pleaded by the parties about the same either in the statement of claim or in the written statement. In this case, the punishment of "dismissal from services without notice" was passed against the workman on 09.10.1999, whereas, the order of the acquittal of the workman in the criminal case was passed on 05.09.2008. It is also clear from the copy of the judgment passed in criminal case no. 83/2000 that the same was instituted on 06.03.2000, which was after passing of the final order of punishment in the disciplinary proceeding.

Moreover, it is well settled by the Hon'ble Apex Court in a number of decisions including the decisions cited by the learned advocate for the party No.1 that, "Question of considering reinstatement after decision of acquittal or discharge by a competent criminal court arises only and only if dismissal from services was based on conviction by criminal court, in view of the provisions of Article 311(2) second proviso (a) of constitution or analogous provisions in statutory rules applicable in a case. In case, where enquiry is independent of criminal proceedings, acquittal in a court is of no help. Even if a person stands acquitted by a criminal court, domestic enquiry can be held, since standard of proof required in a domestic enquiry and that in a criminal case are different. Facts, charges and nature of evidence etc involved in a individual case would determine as to whether decision of acquittal would have any bearing on the findings recorded in the domestic enquiry.

The Hon'ble Apex Court in the decision reported in A.I.R. 1999 SC – 1416 (Capt. M.Paul Anthony Vs Bharat Gold Mines) have held that, "proceedings in a criminal case and departmental proceedings can go simultaneously, except where departmental proceeding and the criminal

case are based on the same set of facts and the evidence in both the proceedings is common and basis for this proposition is that proceedings in a criminal case and departmental proceedings operate in distinct and different jurisdictional areas. In departmental proceedings, factors operating in the mind of disciplinary authority may be many, such as enforcement of discipline, or to investigate level of integrity of delinquent or other staff. The standard of proof required in those proceedings is also different from that required in a criminal case. While in departmental proceedings, the standard of proof is one of preponderance of probabilities, in a criminal case, the charge has to be proved by the prosecution beyond reasonable doubt. The departmental proceedings and proceedings in criminal case can proceed simultaneously as there is no bar in there being conducted simultaneously, though separately".

In this case, the enquiry held against the workman was independent of the criminal proceeding. It is also found that charges in the criminal case and that in the departmental proceeding were not the same or similar. Hence, the acquittal of the workman in the criminal case is of no help to him.

8. On perusal of the materials on record, it is found that the findings of the Enquiry Officer are based on the evidence on record of the enquiry and he has assigned reasons in support of his findings. It is not a case of no evidence or that the findings of the Enquiry Officer are against the evidence on record. Hence, it cannot be said that the findings of the Enquiry Officer are perverse.

9. So far the proportionality of the punishment imposed against the workman is concerned, I think it proper to mention about the principles enunciated in the Hon'ble Apex Court as reported in (2011) 4 SCC-584 (Supra), (2006) 2 SCC-255 (Supra) and AIR 2003 SC-1571 (Supra).

In the decision reported in (2011) 4 SCC-584(Supra), it is held by the Hon'ble Apex Court that:

"Held, when considering whether punishment of termination form service imposed upon a bank employee is shockingly disproportionate to gravity of proved misconduct, loss of confidence in employee is an important and relevant factor."

In the decision reported in (2006) 2 SCC-255(Supra), the Hon'ble Apex Court have held that:

"Labour law-Departmental/Domestic enquiry-Penalty/punishment –Scope of judicial review of – Sympathy or generosity, if a ground. Where the employee was found guilty of mis-appropriation the employer corporation's fund, held, the primary factor to be taken into consideration was the loss of confidence and not the amount of money misappropriated. Hence, notwithstanding that there was no such allegation against that employee in the

past, held, the punishment of dismissal from service imposed by the employer could not be interfered with by the court on ground of sympathy or generosity. In view of the position of trust occupied by the delinquent, further held, the matter required to be dealt with rather firmly and not leniently.”

In the decision reported in AIR 2003 SC-1571 (Supra), the Hon'ble Apex Court have held that;

“Judicial review of punishment imposed in disciplinary proceeding-Delinquent Asstt. Manager of Bank charged for fabricating, manipulating records- charge not casual but serious in nature punishment of dismissal imposed-Not shockingly disproportionate- Bank officer is required to exercise higher standard of honesty and integrity-Defence that there was no loss or profit resulting – Not available when delinquent employee acted without authority.”

10. In this case, commission of serious misconduct of misappropriation and fraud has been proved against the workman in a properly conducted departmental enquiry. Hence it is ordered:

ORDER

The action of the management of the Assistant General Manager, State Bank of India, Region-I, Zonal Office, Nagpur in awarding the punishment of dismissal without notice to Shri Hiralal Fulsunge, Ex-Asstt. (Cash & Accts.) w.e.f. 09.10.1999 is justified. The workman is not entitled to any relief.

J. P. CHAND, Presiding Officer

नई दिल्ली, 24 अप्रैल, 2014

का.आ. 1283.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, नागपुर के पंचाट (संदर्भ संख्या 28/2011) को प्रकाशित करती है जो केन्द्रीय सरकार को 04/04/2014 को प्राप्त हुआ था।

[सं. एल-12012/59/2011-आईआर (बी-1)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 24th April, 2014

S.O. 1283.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 28/2011) of the Central Government Industrial Tribunal-cum-Labour Court, Nagpur as shown in the Annexure in the Industrial Dispute between the management of State Bank of India and their workmen, which was received by the Central Government on 04/04/2014.

[No. L-12012/59/2011-IR (B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE

BEFORE SHRI J. P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/28/2011

Date: 24.03.2014.

Party No. 1(a) : The Asstt. General Manager
State Bank of India, Region-II,
Kingsway, Nagpur-1 (MS)

(b) : The Branch Manager,
State Bank of India, Moudha
Branch, At/Po/Tq. Moudha,
Distt. Nagpur.

Versus

Party No. 2 : Shri Ashok Motiram Kawle,
R/o. Plot No. 136, Mudliar
Layout, Nr. Badshah Medical
Store, Shanti Nagar, Nagpur-8

AWARD

(Dated: 24th March, 2014)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) (“the Act” in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of SBI and their workman, Shri Ashok Motiram Kawle, for adjudication, as per letter No. L-12012/59/2011-IR (B-I) dated 17.10.2011, with the following schedule:-

“Whether the action of the management of State Bank of India, Region-II, Nagpur in terminating Shri Ashok Motiram Kawle from service w.e.f. 22.09.2007 is legal and justified? If not, to what relief is the workman entitled?”

2. On receipt of the reference, parties were noticed to file their respective statement of claim and written statement, in response to which, the workman, Shri Ashok Motiram Kawle, (“the workman” in short) filed the statement of claim and the management of S.B.I., (“party no.1” in short) filed the written statement.

The case of the workman as presented in the statement of claim is that he was appointed as a Sweeper-Cum-Messenger by order dated 24.10.1987 at Gandhi Market Branch and in the year 1988, he was transferred to Kamptee Branch of party no.1 and he was served with a memo dated 11.06.2005 on the false charge of taking illegal gratification of Rs. 15000/- (wrongly mentioned as Rs. 1500 in the statement of claim) from four customers of the branch and by his letter dated 25.07.2005, he denied the charge, but he was served with a show cause notice dated 01.10.2005 repeating the same charge, but stating that it

was based on a report dated 11.05.2005 published in the newspaper, "Public Parliament" and he was also served with the charge sheet dated 18.02.2006, containing the charge of accepting illegal gratification from four borrowers, namely, Sushil Laxmanrao Ingole, Sachin Papu Hatel, Santosh Narayan Telange and Ajay Khare and party no.1 appointed one Shri J.S. Bodas on 03.10.2006 as the enquiry officer to enquire into the charges against him and in the enquiry, only Ajay Khare and Sachin Hatel appeared before the enquiry officer and the enquiry officer in his report stated that charge of accepting bribe from Sachin Hatel and Ajay Khare has been proved and the enquiry was conducted in an arbitrary and illegal manner with a prejudicial mind of establishing the charge against him, which is clear from the facts that even though, the charge sheet was given for accepting money from four persons, only two out of the four complainants were examined in the enquiry and the rest two complainants were not examined and the authenticity of the complaints of Shri Ajay Khare and Shri Sachin Hatel had not been properly verified and their statements were taken as the basis for holding the charges to have been proved against him and in his inquiry report, the Enquiry Officer did not mention anything about the date, place, mode of payment and the details of the payments, if any, made by the two complainants, who had been examined and the Enquiry Officer had not taken into consideration the fact that the peon/sweeper of the Bank has no role in sanctioning of the loan to any customer and therefore cannot accept bribe of Rs. 15000/- and the party No.1 took two months time to issue the memo, after the publication of the news in the news paper and thereafter, three months to issue the show cause notice and thereafter, four months to issue the charge sheet and the said facts show that he was made the scapegoat to protect the field officer, Shri Gawate and a senior officer, whose name had appeared in the said newspaper and the charge sheet was illegal as the same was not issued under the Standing order and he was not allowed the assistance of an advocate and the findings of the Enquiry Officer are perverse as the findings are without any basis and on the basis of such an enquiry report, he was removed from services by order dated 22.09.2007. It was also pleaded by the workman that three complainants out of four, on 22.07.2005 gave in writing about their lodging the complaints against him on the instigation of some persons and that they did not pay any money to him and party NO.1 did not lodge any complaint against him to the police or to the Anti-corruption Department in this connection and the punishment is shockingly disproportionate and he is entitled for reinstatement in service with continuity, full backwages and other consequential benefits and he is out of employment since the date of his illegal termination.

3. The party No.1 in the written statement has pleaded inter-alia that the workman has made an attempt

to prove that enquiry was like a criminal trial and while the workman was working at Kamptee Branch, Nagpur as a sweeper-cum-messenger, four complaints were received from four borrowers against him, for demanding and accepting illegal gratification in the name of the officers of the Bank in dealing with loan applications under government sponsored scheme and the act of the workman was also published in local newspaper, which tarnished the image of the bank in the eyes of the public in general and customers in particular and the Bank investigated into the matter and came to the conclusion that there is truth in the complaints so, it issued memo dated 11.07.2005 against the workman, calling for his explanation to various omissions and commissions committed by him and the workman submitted his explanation dated 25.07.2005, denying the allegations made in the memo and as the explanation of the workman was found not to be satisfactory, it was decided to hold enquiry against him and accordingly, he was informed by communication dated 01.10.2005 and charge sheet dated 18.02.2006 was issued against him, which was received by him on 23.02.2006 and the workman submitted his reply on 25.02.2006 denying the charges levelled against him and it appointed the enquiry officer to enquire into the misconduct as mentioned in the charge sheet and the enquiry commenced on 26.07.2006 and concluded on 01.09.2006 and two witnesses were examined and number of documents were produced by the management in the enquiry in support of its case and the workman cross-examined the witnesses through his experienced and competent defence representative Mr. S.T. Gulgulwar and the enquiry officer submitted his report dated 03.10.2006 holding two charges out of four to have been proved and the enquiry authority agreed with the findings of the enquiry officer and supplied copy of the enquiry report to the workman by letter dated 03.10.2006 and the second show cause notice dated 12.05.2007 was served on the workman and the workman was given the scope of personal hearing by the disciplinary authority and the workman and his defence representative appeared before the disciplinary authority on 10.08.2007 for personal hearing and the disciplinary authority duly considered the enquiry report and after examining the entire materials independently, imposed the punishment of removal of the workman from services on 20.09.2007 and the final order was received by the workman on 22.09.2007 and the workman preferred an appeal on 30.10.2007, against the order of punishment and the appeal filed by the workman was dismissed by the Appellate Authority after due consideration and the enquiry was conducted in a fair manner, affording the workman full opportunity to defend his case and the representation of the workman by an advocate is not available as a matter of right in departmental enquiry and the findings of the enquiry officer are based on evidence and materials on record and the punishment of removal from service imposed on the workman is just

and proper and commensurate with the gravity of the misconduct proved in the enquiry and the workman is not entitled to any relief.

4. It is to be mentioned here that as this is a case of removal of the workman from services, after conducting of a departmental enquiry against him, the fairness or otherwise of the departmental enquiry was taken up as a preliminary issue for consideration and as per order dated 24.12.2013, the departmental enquiry conducted against the workman was held to be proper, legal and in accordance with the principles of justice.

5. At the time of argument, it was submitted by the learned advocate for the workman that findings of the Enquiry Officer are perverse and there is no sufficient evidence on record to prove the charges levelled against the workman and out of the four complainants, only two complainants were examined and the enquiry was concluded without examination of the remaining two complainants and the authenticity of the evidence of the two complainants examined in the enquiry were not properly verified and the Enquiry Officer in his report has not thrown any light on the date, place, mode of payment and the details of the payments and the Enquiry Officer did not take into consideration the fact that the peon/sweeper of the Bank has no role in sanctioning of loan to any customer and therefore, cannot accept bribe of Rs. 15000/- and it is clear from the materials on record that the workman has been made the scapegoat to protect the Field Officer and a senior Officer. It was also submitted by the learned advocate for the workman that the workman was not allowed the assistance of an advocate and as such, it can be said that the workman was not given reasonable opportunity to defend himself properly and the punishment imposed against the workman is shockingly disproportionate and as such, it is necessary to set aside the order of punishment dated 22.09.2007 and the workman is to be reinstated in service with continuity and full back wages.

6. Per contra, it was submitted by the learned advocate for the party No.1 that the preliminary issue of fairness of the departmental enquiry has already been answered in favour of the management by order dated 24.12.2013 and the workman has made an attempt to show that the departmental enquiry is like a criminal trial and principles of criminal jurisprudence are applicable to enquiry and the power of the Tribunal is of review only and only when, it is found by that the enquiry is held against the principles of justice or the punishment is shockingly disproportionate to the misconduct, then only the Tribunal can interfere with the punishment. It was further submitted by the learned advocate for the party No.1 that the findings of the Enquiry Officer are based on the evidence adduced in the enquiry and the documents placed on record and the findings of the Enquiry Officer

are not perverse and the Bank has lost confidence in the workman and the punishment imposed on the workman cannot be said to be disproportionate to the grave misconduct proved against him in a properly conducted departmental enquiry and as such, there is no scope to interfere with the punishment and the workman is not entitled to any relief.

In support of the submissions, the learned advocate for the party No.1 placed reliance on the decisions reported in 2005 SCC(L&S)-567 (Damoh Panna Sagar Rural Regional Bank vs. Munnalal Jain), 2005 SCC(L&S)-200 (D.M.Plantation Division, Andaman Nicobar Islands vs. Munnu Barik), (2000) 1 SCC-416 (High Court of Judicature of Bombay vs. S.S.Patil), A.I.R. 1989 SC-1185 (Union of India vs. Paramanand), (2005) SCC (L&S)-407 (Div. Controller vs. A.T.Mana), (2010) 2 SCC(L&S)-239 (U.P. STRTC vs. Suresh Chand), 2003 SCC(L&S)-468 (C.M.D.U. Cooperative Bank vs. P C Kakkar) and 2005 SCC(L&S)-282 (Bharat Heavy Electrical Ltd. vs. M. Chandra Shekhar Reddy)

Keeping in view, the principles enunciated by the Hon'ble Apex Court in the decision mentioned above, now, the present case in hand is to be considered.

7. So far the contention raised by the learned advocate for the workman regarding the Enquiry Officer not allowing the workman the assistance of an advocate in the departmental enquiry is concerned, it is to be mentioned here that the said submission was already considered and answered against the workman, while deciding the preliminary issue of fairness of the departmental enquiry held against the workman. So, the question of considering the same again does not arise. Hence, I find no force in the contention raised by the learned advocate for the workman on that score.

8. Before delving into the merit of the matter, I think it proper to mention the settled principles regarding the power of a Tribunal in interfering with punishment awarded by the competent authority in departmental proceedings and regarding.

In a number of decisions, including in the decision cited by the learned advocate for the party No.1, the Hon'ble Apex Court have held that:-

“The jurisdiction of the Tribunal to interfere with the disciplinary matters or punishment cannot be equated with an appellate jurisdiction. The Tribunal cannot interfere with the findings of the Inquiry officer or competent authority where they are not arbitrary or utterly perverse. The power to impose penalty on a delinquent officer is conferred on the competent authority either by an Act of legislature or rules made under the proviso to Art. 309 of the Constitution. If there has been an enquiry consistent with the rules and in accordance with principles of

natural justice what punishment would meet the ends of justice is a matter exclusively within the jurisdiction of the competent authority. If the penalty can lawfully be imposed and is imposed on the proved misconduct, the Tribunal has no power to substitute its own discretion for that of the authority. The adequacy of penalty unless it is malafide is certainly not a matter of the Tribunal to concern itself with. The Tribunal also cannot interfere with the penalty if the conclusion of the Inquiry officer or the competent authority is based on evidence even if some of it is found to be irrelevant or extraneous to the matter.”

It is also well settled that in a disciplinary proceeding, the standard of proof required is that of preponderance of probability and not proof beyond reasonable doubt like in a criminal trial and where there are some relevant materials which the authority has accepted and which materials may reasonably support the conclusion that the officer is guilty, it is not the function of the Tribunal to review the materials and if the enquiry has been properly held, the question of adequacy or reliability of evidence cannot be canvassed before the Tribunal.

It is also well settled that the jurisdiction of the Tribunal to interfere with the disciplinary matters for punishment cannot be equated with an appellate jurisdiction and the Tribunal cannot interfere with the findings of the enquiry officer or competent authority, where they are not arbitrary or utterly perverse and the power to impose penalty on a delinquent officer is conferred on the competent authority either by an act of legislature or rules made under the provision of Article 309 of the Constitution and if there has been an enquiry consistent with the Rules and in accordance with the principles of natural justice, what punishment would meet the ends of justice in a matter exclusively within the jurisdiction of competent authority and if the penalty can be lawfully imposed and is imposed on the proved misconduct, the Tribunal has no power to substitute its own decision for that of the authority.

Where there are some relevant materials which the authority has accepted and which materials may reasonably support the conclusion that the officer is guilty, it is not the function of the High Court exercising its jurisdiction under Article 226 to review the materials. If the enquiry has been properly held, the question of adequacy or reliability of evidence cannot be canvassed before the High Court.”

Now, the present case at hand is to be considered with the touch stone of the principles enunciated by the Hon'ble Apex Court as mentioned above. On perusal of the materials on record, it is found that the enquiry officer has based his findings on the materials on record of the departmental proceeding. He has assigned cogent reasons

in support of such findings. This is not a case of no evidence. It is also not a case that the findings of the enquiry officer are totally against the evidence on record or that the findings of the enquiry officer are as such, which cannot be arrived at by a prudent man on the evidence on record. Hence, it cannot be said that the findings of the enquiry officer are perverse.

9. So far the question of punishment is concerned; it is found that serious misconducts have been proved against the workman in a properly held departmental enquiry. In this instant case, the workman has been found guilty of taking illegal gratification from customers. There is nothing wrong on the part of the party no.1 losing confidence in such an employee and awarding punishment of termination of his services. The workman was holding a position of trust, where honesty and integrity were inbuilt requirements of functioning and therefore, the matter required to be dealt with firmly and not leniently. Hence, the punishment of termination from services of the workman cannot be said to be shockingly disproportionate to the proved misconducts. Hence, it is ordered.

ORDER

The action of the management of State Bank of India, Region-II, Nagpur in terminating Shri Ashok Motiram Kawle from service w.e.f. 22.09.2007 is legal and justified. The workman is not entitled to any relief.

J. P. CHAND, Presiding Officer

नई दिल्ली, 24 अप्रैल, 2014

का.आ. 1284.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार स्टेट बैंक ऑफ पटियाला के प्रबंधन के संबंधित नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, चण्डीगढ़ के पंचाट (संदर्भ संख्या 11/2010) को प्रकाशित करती है, जो केन्द्रीय सरकार को 31/03/2014 को प्राप्त हुआ था।

[सं. एल-12012/83/2009-आईआर (बी-1)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 24th April, 2014

S.O. 1284.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 11/2010) of the Central Government Industrial Tribunal-cum-Labour Court, No. 1 Chandigarh as shown in the Annexure in the Industrial Dispute between the management of State Bank of Patiala and their workmen, which was received by the Central Government on 31/03/2014.

[No. L-12012/83/2009-IR (B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE

**BEFORE SHRI SURENDRA PRAKASH SINGH,
PRESIDING OFFICER, CENTRAL GOVT.
INDUSTRIAL TRIBUNAL-CUM-LABOUR
COURT-I, CHANDIGARH**

**Case No. ID 11 of 2010. Reference No. L-12012/83/
2009-IR(B-I) dated 21.06.2010**

Sh. Jaswinder Singh, H.No.C-454, Behind Guru Teg
Bahadur Sahib, Ranjit Nagar, Seona Road, Patiala
(Punjab)-147001 through Legal heirs Swaranjit Kaur
W/o Late Sh. Jaswinder Singh, Rajandeep Kaur
daughter, Pritpal Singh son, Ramanjot Singh son. .
. . Workman /Applicants

Versus

1. The Asstt. General Manager, AGM-IV(P), State
Bank of Patiala, Regional Office, Leela Bhawan,
Patiala (Punjab) . . . Respondent

APPEARANCES:

For the Workman : Sh. P.K.Logia

For the Management : Sh. N.K. Zakhmi

AWARD

Dated : 25.03.2014

Government of India Ministry of Labour vide
notification No.L-12012/83/2009-IR(B-I) dated 21.06.2010
has referred the following dispute to this Tribunal for
adjudication :

Term of Reference

“Whether the action of the management of State
Bank of Patiala, in imposing a penalty of removal
from service on their workman Shri Jaswinder Singh
vide order dated 10.04.2009 is legal and justified? If
not, what relief the workman concerned is entitled?”

1. The workman filed claim statement claiming
therein that he was working as cashier at Benra Branch of
the respondent bank and he was placed under suspension
on 29.10.2008 on the allegation that he has committed
certain acts of serious nature for which the disciplinary
proceedings were contemplated against him. He was asked
to explain vide letter dated 03.11.2008, which was followed
by charge sheet dated 03.11.2008. The workman further
stated that he was working as record keeper-cum-godown
keeper but was assigned the duty of head cashier against
the rules. In fact it was the duty of Sarup Singh head
cashier who was deputed to handle the workman of loan
and advances. It is alleged by the workman that the
arrangement has been made to make money in an illegal
manner by bungling in advances. He tried to point the
same out to the branch manager, but the branch manager
threatened him which ultimately resulted into initiation of

investigation by K. K.Bhatti, Chief Manager, during the
period of his medical leave from 30.04.2008 to 07.10.2008.
The workman was directed during his medical leave to
rush to the branch manager on 07.10.2008 to appear before
Sh.Bhatti. Nothing was disclosed to the workman that there
were any complaint against him and Mr. Bhatti was
investigating those complaints. He was issued letter for
explanation. The workman replied vide letter dated
20.11.2008 denying all the charges. The branch manager
procured a letter from the workman on the pretext that it
was only to get him to reinstate in service and revocation
of his suspension. The workman being low salary and
less educated person wrote the confession without noting,
that the same may be used against him at a later stage
which was pre planned by the management. A charge sheet
was issued. He assured by the AGM that it was merely a
procedure formality and he will be reinstated in service.
The AGM also suggest to the workman to stick his
confessional statement during inquiry, so the inquiry may
be completed early and he may be reinstated in service.
Sh.P.P.Kalsi was made the inquiry authority. On the first
date of preliminary inquiry he was asked to sign a statement
of admission which he signed being under coercion and
under influence/undue as the management assured him of
reinstatement. Inquiry Officer without recording the
evidence of the management, submit the inquiry report
holding the workman guilty of charges. Show cause notice
was issued to the workman to whom he replied. The
disciplinary authority ordered removal from service with
superannuation benefits. The workman filed appeal which
was also rejected. It is submitted by the workman that as
the workman had not done any act prejudiced to the bank's
interest and no evidence was recorded by the management
to prove the charges and his confession was procured
under coercion and he was not given any effective
opportunity to defend himself. Therefore, he prayed that
he may be reinstated in service with full back wages and
other consequential benefits.

2. During the course of hearing in this court the
workman expired and his legal heirs were brought on
record.

3. The management filed written statement.
Preliminary objection has been taken that the workman
indulge in misappropriation of fund and he was charge
sheeted on the following misconduct :

- “1. That Sh. Gurcharan Singh, one of customer of
your branch maintaining two accounts viz ACC
A/c No.65029461354 and KGC A/c
No.65029458502, had withdrawn Rs.50,000 out of
his ACC A/c on 30.05.2008 and handed over
Rs.25,000 to you for Deposit in his KGHC A/c
No.65029458502 on the same date. But you have
not deposited the same in his KGC A/c and utilized
the amount for your personal use. Later on, on
03.10.2008, you deposited Rs.26,100/-(including

- interest of Rs.1100) in KGCA/c No.65029458502. Moreover, you had offered Rs.50,000 to Sh.Gurcharan Singh for compromising and not to disclose this secret to the Bank's officials.
2. On 18.10.2008, you had withdrawn a sum of Rs.35,000 from SB A/c No.55022089861 of Smt. Harbhajan Kaur by affixing fictitious thumb impression. No detail of currency notes was given on the reverse of withdrawal form nor name of the recipient was given.
 3. One of the SB Account holders Sh.Malkiat Singh left his SB Pass Book of his Account No.55022076512 with you. At the time of collection of his Pass Book from you, he had enquired from you the balance in his account and had come to know about withdrawal of Rs.35,000 from his account on 30.08.2008. The amount of Rs.35,000 was withdrawn by you by affixing fictitious thumb impression of Sh. Malkiat Singh.
 4. One of the SB Account holders Sh. Inderpal Singh maintaining SB A/c No.65032532479 at the said branch, had given you a sum of Rs.20,000 on 30.06.2008 for depositing the same in his SB Account. You failed to deposit the amount in his Account but you had made a fictitious entry dated 30.06.2008 in his Pass Book with your own handwriting raising his balance from Rs.31,356 to Rs.51,356. When the customer came to know about the factual position, you deposited Rs.10,000 in his SB Account on 26.09.2008 and promised to repay back the balance by 30.10.2008.
 5. One of the SB Account holders Sh. Balbir Singh maintaining SB Account No.65007104851 at the said Branch, had given you a sum of Rs.5,000 for depositing into his account. You handed over Rs.1,000/- to him and utilized Rs.4,000 for your own purpose. The fact came to light when depositor wanted to withdraw Rs.2,000 out of his account but there was only Rs.1,000 in his account.
 6. One of the SB Account holder Sh. Leela Singh(illiterate) Account No.55022083916 requested you to withdraw a sum of Rs.500 from his aforesaid account. You had withdrawn a sum of Rs.1200 and handed over Rs.1200 to Sh. Leela Singh. Shri Leela Singh handed over again Rs.700 to you for re-depositing in his account. You had not deposited the amount in the account of Sh. Leela Singh and you retained the amount with you.
 7. You have thus committed "Gross Misconduct" vide Section 19.5(d), 19.5(j) and 19.5(k) falls in the provisions of Sastry Award as modified by Desai Award with subsequent improvements made in the 8th Bipratite settlement dated 10.04.2002 and rendered yourself liable for disciplinary action.
4. It is submitted by the management in written statement that the workman filed reply in which he has admitted the charges and he requested that he may be pardoned, on the ground that he has two sons and one daughter who are studying and if he lose the job he would be under starvation. It is further pleaded by the management that Sh.K.K.Bhatti was directed to investigate the matter and it reveals from the investigation report that workman Jaswinder Singh admitted his guilt and returned the amount to Sh. Gurcharan Singh. Similarly the workman admitted other charges specifically and categorically and the statements of the witnesses were recorded in the presence of the workman and workman signed the statement. He was placed under suspension and he was asked to explain vide letter 03.11.2008 which was replied by the workman vide letter dated 20.11.2008 in which he admitted his guilt. The inquiry officer was appointed who issued notices to the parties and inquiry was held on 31.01.2009 in which the inquiry officer specifically and categorically asked whether the workman admit or deny the charges which were read out to the petitioner. In the inquiry proceedings the workman admitted the charges voluntarily, categorically and without any pressure, on which the inquiry was concluded. The inquiry officer submitted his report on 10.09.2009 proving all the charges leveled against the workman on the admission of the workman. Copy of inquiry report was also sent to the workman for his comments. The disciplinary authority after considering the inquiry report and confessional statement agreed with the finding of the inquiry officer and decided to impose the penalty of removal from service with superannuation benefits. He was also given personal hearing. The workman replied to the show cause notice. Workman replied that the punishment is unjust and he admitted the mistake on his part. During the personal hearing also the workman admitted his guilt. The disciplinary authority awarded the punishment of compulsory retirement from bank service with superannuation benefits like pension, provident fund and gratuity.
5. The appeal of the workman was also rejected after giving personal hearing also. The workman admitted his guilt before the appellate authority. It is pleaded by the management that the punishment imposed upon workman was proportionate and on categorical admission and after holding proper and just inquiry in accordance with the

principal of natural justice. Therefore, the workman is not entitled to be reinstated in service and his claim may be dismissed.

6. Both the parties lead evidence on fairness of inquiries & on all other issues. The workman Jaswinder Singh filed documents. He also examined himself as WW1 and two other witnesses WW2 Malkiat Singh and WW3 Balbir Singh. The management filed affidavit of two witnesses MW1 K.K. Bhatti who convicted the inquiry and MW2 AGM Bank Patiala. Both the witnesses of the parties were cross examined by the learned counsel for the rival parties.

7. I have heard the arguments and gone through the inquiry report and evidence recorded in this tribunal and all other relevant record. The learned counsel for the workman submitted during arguments that it is a case of no evidence as the management has not proved the charges before the inquiry officer and simply on the admission of the workman which was obtained under coercion from the stage of preliminary inquiry to the stage of appeal which is against the principal of natural justice. In this particular case, no inquiry was conducted and the inquiry officer submitted his report on the basis of the admission of the workman which is not fair and proper. The management was under obligation to prove the charges before the inquiry officer by leading some cogent evidence. The workman was held guilty by the inquiry officer and maximum punishment of removal from services was imposed on the workman which is disproportionate to the alleged act of misconduct. Therefore the workman is entitled to be reinstated in service with full back wages.

8. On the other hand, the learned counsel for the management during argument submitted that right from the stage of preliminary investigation to the stage before the disciplinary proceedings during personal hearing and before the appellate authority during personal hearing, the workman admitted the guilt of committing misappropriation of the amount of the customers as mentioned in the charge sheet without any pressure and coercion from any side. He never reported any coercion to the bank authorities or to the appellate authorities that he was forced by any of the bank officer to write his confession. When preliminary investigation was going on, he appeared before Mr. Bhatti who was deputed to investigate the complaints received from the customers, the workman appeared before the investigating officer and admitted his guilt. He was issued explanation memo and in reply to the explanation he again admitted the charges. He was issued charge sheet and in reply to the charge sheet also the workman admitted his guilt. Still the management preferred to hold departmental inquiry. Shri P. P. Kalsi was appointed as inquiry officer. The workman was given

opportunity to appear in the departmental inquiry. During the course of inquiry proceedings, the inquiry officer, specifically and categorically asked the workman as to whether he admits or deny the charges and the charges were also read out to him. During the departmental inquiry, the workman admitted the charges voluntarily categorically and without any pressure. The workman was also supplied the copies of inquiry reports and comments of the workman were asked. In reply to the inquiry report the workman admitted that he had done mistake in all cases and request for pardon. He was issued show cause notices and also given personal hearing by the disciplinary authority. During personal hearing the workman also admitted his guilt and after considering all facts and record of the case, the disciplinary authority passed the order of removal from service with superannuation benefits. The workman also filed appeal the appellate authority who also provided him personal hearing and there also, he admitted his guilt and his appeal was rejected. The workman was given full opportunity to put his defence and inquiry was conducted in fair and proper manner adhering to the principles of natural justice. As regards the punishment of removal from services with superannuation benefits awarded to the workman is concerned, the learned counsel for the management submitted that taking into consideration the pleas of the workman, he was given punishment of removal from service with superannuation benefits and the punishment was awarded to the workman was in accordance with the gravity of misconduct. Therefore, the workman is not entitled to any relief and the reference is deserved to be answered against the workman.

9. So far as the question of fairness of enquiry is concerned, it is pertinent to mention the order dated 29.11.2010 of my learned predecessor Presiding Officer which is as follow:

“Considering the nature of reference, it will be proper and in the interest of justice to give opportunity for evidence to the parties on the nature of admission which has been challenged by the workman.”

10. In the departmental enquiry the workman was given opportunity to participate in the enquiry and the workman while participating in the departmental enquiry admitted his guilt. In written statement filed by the management, it is pleaded that workman in his letter dated 20.11.2008 admitted his guilt. Thereafter workman admitted his guilt vide letter dated 29.12.2008. During the departmental enquiry, the charges were read out and explained to the workman and workman admitted the charges voluntarily, categorically without any pressure from any side. The enquiry officer after conducting the enquiry in fair and proper manner submitted his report on 10.2.2009 wherein the charges leveled against the workman

were fully proved being admitted by the workman. Copy of the enquiry report was also sent to the workman vide letter dated 16.2.2009 asking for the comments of the workman. Workman submitted his submission vide letter dated 25.2.2009 wherein he has stated that he has done mistake in all the cases and requested for pardon.

11. In these circumstances, it is clear that the departmental enquiry was conducted in a fair and proper manner after following the principles of natural justice. Thus it is held that there is no infirmity in the enquiry proceedings and the same has been conducted in fair and proper manner after adhering the principles of natural justice.

12. The learned counsel for the workman submitted that workman's witness Shri Malkiat Singh and Balbir Singh have not supported the allegations against the workman. WW1 Jaswinder Singh during cross-examination stated as under:-

“It is correct that Shri Gurcharan Singh, Malkiat Singh, Smt. Harbhajan Kaur, Shri Inder Pal Singh, Shri Leela Singh, Balbir Singh lodged the complaint against me for withdrawing the money from their account and misappropriating the same and also not depositing the same.

In his cross-examination, workman further stated that :—

“Letter dated 7.12.2008 bears my signatures. It was written under threat. Shri Bhatti has threatened me to kill me by fire. I have not lodged any complaint regarding the threat to any police officer or any officer to the bank. In any of my representation made to the disciplinary authority and appellate authority the said threat to kill was not made to the disciplinary authority and appellate authority. It is incorrect to suggest that I deposited Rs. 25000 plus interest which was misappropriated from Gurbachan Singh. The letter dated 7.10.2009 was dictated by Mr. Bhatti and was just signed by me.

.....It is further stated in cross-examination by the workman:-

“statement dated 7.10.2008 relating to Harbhajan Kaur bears my signatures. Likewise statement dated 7.10.2008 relating to Malkiat Singh, Inderpal Singh, Leela Singh and Balbir Singh bears my signatures. I made the signatures on the assurance of the Branch Manager Shri J.S.Kumar for having the lenient view

and to reinstate me in the service. I was assured by the AGM on phone. I have not promised to Malkiat Singh to return the amount by 17.10.2008, this document also contain the signatures of my wife.. The endorsement on letter dated 7.10.2008 relating to Malkiat Singh contain my signatures but not the endorsement in my handwriting.

..... I again admitted the charges before the disciplinary authority on assurance of lesser punishment.”

13. Thus it is clear from the statement of the workman that the workman admitted the charges during the departmental enquiry before Enquiry Officer voluntarily. So far the statement of workman's witnesses Malkiat Singh and Balbir Singh are concerned, it is well established that the degree of proof in departmental enquiry and other proceedings are quite different. In criminal trial prosecution is required to prove the charge beyond all reasonable doubts whereas in departmental enquiry probability of preponderances is to be considered. Even a doubtful character or suspicious conduct is sufficient to found him guilty in departmental enquiry.

14. As regards the submission of the learned counsel for the workman that punishment imposed upon the workman is disproportionate to the misconduct, it is clear that the workman committed misconduct by misappropriating the amount from the accounts of the customers of the bank, shaking the faith of the customer in the banking institution. Banking business runs on the faith of its customer. The workman not once but on several occasions admitted his guilt and requested for pardon. In that situation, no interference is warranted in the punishment awarded to the workman.

15. In view of the above discussion made in the earlier paras, the action of the management of State Bank of Patiala in imposing the penalty of removal from service on the workman Shri Jaswinder Singh vide order dated 10.4.2009 is legal and justified and the workman was not entitled to any relief. The reference is answered accordingly.

16. Central Govt. be informed. Soft copy as well as hard copy be sent to the Central Govt. for publication.

Chandigarh.
25.3.2014

S. P. SINGH, Presiding Officer

नई दिल्ली, 24 अप्रैल, 2014

AWARD

का.आ. 1285.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार स्टैण्डर्ड चार्टर्ड बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, मुम्बई के पंचाट (संदर्भ संख्या 27/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 3/04/2014 को प्राप्त हुआ था।

[सं. एल-12011/2/2007-आईआर (बी-1)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 24th April, 2014

S.O. 1285.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 27/2007) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Mumbai as shown in the Annexure in the Industrial Dispute between the management of Standard Chartered Bank and their workmen, received by the Central Government on 3/4/2014.

[No. L-12011/2/2007-IR (B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, MUMBAI****PRESENT :** K. B. KATAKE, B.A.LL.M, Presiding Officer**Reference No. CGIT-2/27 of 2007****Employers in Relation to the Management of Standard Chartered Bank**

The Regional Head
ER M/s. Standard Chartered Bank
23-25, M.G. Road, Fort
Mumbai-400 001

AND**THEIR WORKMEN**

The Secretary
Grindlays Bank Employees Union
90, M.G. Road
Mumbai-400 001.

APPEARANCES :

For the Employer : Mr. Ashok D. Shetty,
Ms. P.S. Shetty, Advocates

For the Workman : Mr. M.B. Anchan, Advocate
Mumbai, dated the 10th January, 2014

1. The Government of India, Ministry of Labour & Employment by its Order No. L-12011/2/2007 -IR (B-I) dated 28/06/2007 in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following industrial dispute to this Tribunal for adjudication:

“Whether the Standard Chartered Bank, Mumbai has committed Unfair Labour Practice by extending the benefits of ‘Memorandum of Settlement’ dated 10.03.1999 to ten workmen of Grindlays Bank Employees’ Union beyond the prescribed time limit mentioned in the said Memorandum of Settlement dated 10.03.1999 itself? If yes, whether the management is liable to be prosecuted u/s 25 U of I.D. Act, 1947 for practicing Unfair Labour Practice ?”

2. After receipt of the reference, notices were issued to both the parties. In response to the notice, the second party union filed their statement of claim at Ex-3. According to them there was settlement agreement signed under Section 2P read with Section 18 (1) of I.D. Act read with rule 58 of Central Rules by the first party with the second party union dated 10/03/1999. The said settlement was valid from 01/04/1999 upto 31/03/2002. According to the first party in order to lure the loyal members of their union and to force them to leave the membership of the union, the management had introduced a new clause by which any workman who is not member of any unit affiliated to AIGBEA shall be bound by the terms and conditions of the settlement if he/she accepts the settlement by making a declaration to that effect as per annexure enclosed under this settlement which will be made available to such employees who will have to fulfill the obligations under this settlement. This option of acceptance of the settlement by submitting the receipts shall be available for 90 days from the date of signing the settlement. By this method the management tried to win over the loyal members of the union by enticing them with monetary benefit and make them to submit their resignation from the membership of each union. According to the union there is nothing in the section to justify an extended meaning being given to it contrary to the ordinary law that a contract will bind only those who are parties to it. Section 18 (1) of the I.D. Act bind only those workers who are the members of the union at the time of settlement and not the others. The settlement dt. 10/3/1999 was binding only on the members of the association who has signed the settlement under Section 18 (1) of the I.D. Act.

3. According to the union after signing the said settlement in March, 1999 the management continued to pressurize and coerce the members of Employees Union

to resign them from the membership of the union and to avail benefits by signing the annexure to the said settlement. In order to pressurize the members, management also stopped sanctioning loans to them under some or the other pretext. As a result of this intensive coercion, ten members of Employees Union resigned from the membership of the union and signed the receipt after due date for accepting the benefit of the said settlement of March 1999. The union has given their names and date of resignation and the date of accepting settlement respectively. According to the union as these ten employees have accepted the settlement much after the due date prescribed for, therefore these ten employees are not entitled to the benefit given as per the settlement. According to the union it is illegal and violative of principle of equality and natural justice and it amounts to unfair labour practice. Therefore they pray that action of the management in extending benefit to the one set of workers so as to break existing union be declared illegal, invalid, improper and against equity and good conscious and it amounts to unfair labour practice. Therefore they pray for declaration to that effect. They also pray for direction to prosecute the management under Section 25 U of the I.D. Act 1947.

4. The first party management resisted the statement of claim vide their written statement at Ex-7. According to them the reference is bad in law and not maintainable. It is pertaining to extending the benefit of the Memorandum of Settlement dated 10/03/1999 to the 10 workmen. Thus it does not fall in the ambit of industrial dispute. There is no cause of action against the first party. The terms of the said settlement are binding only to the parties of the said settlement. The ten workmen referred in the statement of claim had approached and requested the Bank through majority union of which they became member after resigning from the membership of second party union for the benefit of the settlement. The period of 90 days is not applicable to the ten workmen referred to, as on the date the benefit have been extended to them, they were bonafied members of All India Grindlays Bank Employees' Association and had accepted the terms of the said settlement. These workmen were given the benefit of the settlement. It is quite lawful. They denied that they had enticed or coerced the workmen to resign from second party union. The contents in the statement of claim are false. The second party is not entitled to the relief claimed for. The first party has not indulged in any unfair labour practice. Therefore they pray that the reference be dismissed with cost.

5. Following are the issues for my determination. I record my findings thereon for the reasons to follow.

Sr. no.	Issues	Findings
1.	Whether the reference is tenable in the present form?	No
2.	Whether the first party is guilty of unfair labour practice?	No
3.	Whether the action of the first party violates the principle of equity & natural justice?	No
4.	What relief the second party union is entitled to?	No relief.

REASONS

Issue No. 1 :-

6. In this respect it was submitted on behalf of the second party that settlement entered into during conciliation proceeding is binding on all the workmen working in the establishment irrespective of the membership of the union which entered into the agreement. According to the second party the settlement dated 10/03/1999 is not settlement during the course of conciliation. It was private settlement between first party and the second party union. Therefore the said settlement was binding and the members of the second party union only are entitled to the benefit under the said settlement. According to them the management has inserted the clause to extend benefits of the settlement to all the employees who consented and signed for the same within 90 days from the date of the settlement. According to the union the management has inserted the said clause to give benefit of the settlement to the non-members of the union and enticed the members of the union to resign from the union and join the union under control of the management.

7. In this respect the Ld. Adv. for the first party submitted that the dispute raised herein is neither related to the demands of the workmen nor it has any concern with the subject matter of industrial dispute. Therefore the Ld. Adv. for the first party submitted that the point raised herein by the union is infact not an industrial dispute. Therefore the reference is not tenable. In support of his argument the Ld. Adv. for the first party resorted to Apex Court ruling in **ANZ Grindlays Bank Ltd. V/s Union of India & Ors. AIR 2006 SC 296** wherein the Bank had extended benefit under Settlement to employees who were not members of the Association on their giving acceptance in writing. The Federation representing minority of employees disputed clause in the settlement giving benefit therein only to members and action of Bank extending benefit to other employees on giving individual acceptance of settlement. In the circumstances the Hon'ble Court observed that;

“The action of the Bank in asking for receipts from those employees, who are not members of the Association but wanted to avail of the benefit of the settlement, again does not give rise to any kind of dispute between the Bank and the Federation. Thus reference made by the Central Government for adjudication by Industrial Tribunal is wholly redundant and uncalled for.”

8. In the case at hand the second party union has also not referred to any demand or claim made by them neither alleged refusal thereof by the management. Their prayer is altogether different. They claimed that the ten workmen who had not given undertaking within the period should not be given benefit of the settlement/agreement. The second party claimed that the said action of the first party amount to unfair labour practice. Giving benefit of the settlement to some other workers even after the due date cannot be said unfair labour practice, neither it can be called industrial dispute. Therefore in the light of above ruling I hold that the reference is not maintainable as there is no industrial dispute as such. Accordingly I decide this issue no.1 in the negative.

Issue no. 2 to 4 :

9. In the case at hand question of discrimination or violation of principle of equity and natural justice does not arise as no workman is deprived of any of his right. Extending the benefit to the ten other workers who are not members of the second party union cannot be said violation of any principle. So also it cannot be termed as unfair labour practice as has been alleged. On the other hand these workers are given benefits of the settlement though they have signed the under taking after the due date. Extending equal benefits to the members of the union and even to non-members and making provision therefor would not amount to either discrimination or violation of principle of equity and natural justice. Making any such discrimination would no doubt amount to violation of principle of equity and natural justice. In the circumstances, I hold that extending benefits to some other workmen equal to the members to the union cannot be termed as unfair labour practice or violation of principle of natural justice as has been alleged. Accordingly I decide these issues nos.2 & 3 in the negative. Consequently I hold that the second party is not entitled to any relief and decide this issue no.4 also in the negative and proceed to pass the following order:

ORDER

The Reference stands dismissed with no order as to cost.

Date: 10/01/2014

K. B. KATAKE, Presiding Officer

नई दिल्ली, 24 अप्रैल, 2014

का.आ. 1286.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 27/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 4/4/2014 को प्राप्त हुआ था।

[सं. एल-12012/42/2005-आईआर (बी-1)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 24th April, 2014

S.O. 1286.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 27/2007) of the Central Government Industrial Tribunal-cum-Labour Court, Nagpur as shown in the Annexure in the Industrial Dispute between the management of State Bank of India and their workmen, received by the Central Government on 4/4/2014.

[No. L-12012/42/2005-IR (B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE

BEFORE SHRI J.P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/27/2007

Date : 19.03.2014

Party No. 1 : The Assistant General Manager,
State Bank of India,
Region-V, Head Office, Kingsway,
Nagpur.

Versus

Party No. 2 : Shri Namdeo Mahadeo Bokde (Dead)
Substituted by legal heirs
(a) Smt. Shobha (widow)
(b) Kumari Manisha (daughter)
(c) Kumari Rupali (daughter)
(d) Mohan (son)

All residents of Dhamak Taluka
Nandgaon, Khandeswar, Amravati.

AWARD

(Dated: 19th March, 2014)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) (“the Act” in short), the Central Government has referred the industrial dispute between the employers, in relation to the

management of State Bank of India and their workman, Shri Namdeo Mahadeo Bokde, for adjudication, as per letter No. L-12012/42/2005-IR (B-I) dated 04.06.2007, with the following schedule:-

“Whether the action of the management of the State Bank of India, Nagpur in terminating the services of Shri Namdeo S/o Mahadeo Bokde with effect from 02.08.2004 is justified? If not, to what relief he is entitled?”

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the workman, Shri Namdeo Mahadeo Bokde, (‘the workman’ in short), filed the statement of claim and the management of State Bank of India, Nagpur (‘Party No. 1’ in short) filed their written statement.

The case of the workman as presented in the statement of claim is that he belongs to special backward class and he passed SSC examination in the year 1984 and he joined the services of the party No. 1 in the year 1985 as water man-cum-sweeper-cum-messenger and he worked continuously till 1988 and he was a workman, within the meaning of Section 2(s) of the Act and party No. 1 is a nationalized bank and an industry and the provisions of the Act and so also, the provisions of the Shops and Establishment Act are applicable to it and again he worked continuously from 1991 to July, 2004 with the party No.1 and he discharged his duty honestly and sincerely and he was never issued with any charge sheet or memo, during his service tenure and on 02.08.2004, party no. 1 asked him to change his salary vouchers, but as he denied for the same, his services were orally terminated on 02.08.2004 by party no.1 and the action of party no.1 was arbitrary, illegal and colorable exercise of power and the post against which, he was working was still available and he had completed more than 240 days of continuous service and acquired the status of permanent employee and it was incumbent upon party no.1 to regularize his services, but instead of regularizing his services, party no.1 terminated his services, without complying the mandatory provisions of sections 25-F and 25-G of the Act and before termination of his services, neither any notice nor notice pay, nor retrenchment compensation was offered to him and therefore, the termination was illegal and the illegal termination was effected with the intention to deny him the benefit of permanency and he is therefore, entitled for reinstatement in service with continuity and full back wages.

The workman also pleaded that he made a representation to party no.1 for his reinstatement, but party no.1 did not reply to the same, so he sent a legal notice through his advocate to party no.1 and party no.1 replied the same, by offering him the job of canteen boy having no concerned with his employment and then, he raised

the industrial dispute before the ALC and due to the failure of the conciliation, the ALC submitted a failure report to the Central Government and as the Central Government, vide order dated 13.09.2005, declined to refer the dispute to the Tribunal for adjudication, he filed writ petition No. 4155/2006 before the Hon’ble High Court, Nagpur Bench for redress and as per the direction of the Hon’ble High Court in the said writ petition, the Central Government referred the dispute to this Tribunal for adjudication.

The workman had prayed for his reinstatement in service with continuity and full back wages.

3. It is to be mentioned here that as the workman died during the pendency of the reference, his legal heirs, his wife, daughters and son, namely, Smt. Sobha, Kumari Manisha, Kumari Rupali and Mohan were substituted in his place as per order dated 26.03.2012.

4. The party no.1 in the written statement has pleaded inter-alia that the workman has misquoted the facts and law in the statement of claim and he worked mainly and substantially as a canteen boy with the local implementation committee (‘LIC’ in short) and persons engaged by the LIC are not the employees of the Bank and sometimes, the workman was engaged purely in casual/daily wage capacity intermittently, but without continuity in service, due to administrative exigencies and sometimes, he worked for the full day, but mostly, on part time basis, for doing the job of bringing water from the well and cleaning the area of the branch premises and during the month of July, 2003, the water pipeline was choked and due to irregular electric supply, water was not available from the Gram Panchayat and the Branch was therefore, unable to provide drinking water to the staff and customers and hence, the workman was asked to fetch drinking water from the well and to clean the branch premises for two days per week on oral contract at the rate of Rs. 500 per month, which was purely on temporary basis for the period from July, 2003 to July, 2004 and as from August, 2004, the water supply was regular, there was no need to engage the workman to bring water from the well and the workman did not complete 240 days in the preceding 12 calendar months of the alleged date of retrenchment and the engagement of the workman was purely contractual and such contract came to an end upon non-renewal of the contract, due to non-availability of work of bringing water from the well.

It is further pleaded by the party no.1 that the workman informed the ex-official chairman of LIC i.e. the branch manager that he was not interested to continue as the canteen boy and he left the job and on receipt of the notice dated 24.08.2004 given by the workman, he was given the reply dated 27.08.2004 in which, he was informed that he had left the job on his own volition and if he wished to repeat, he may join immediately, but the workman did not join the duties and there was no termination of the

employment or any retrenchment as alleged by the workman and the workman is not entitled to any relief.

5. Both the parties have placed reliance on documentary evidence in support of their respective claim. Besides the documentary evidence, the legal heirs of the deceased workman has adduced oral evidence to prove the case Smt. Shobha, the widow of the deceased workman has examined herself as a witness.

The examination-in-chief of Smt. Shobha on affidavit is in the line of the stands taken by the deceased workman in the statement of claim. However, in her cross-examination, this witness has admitted that her husband was making tea in the bank and also cleaning the utensil and in 2003, her husband was supplying drinking water to the bank, by fetching the same from the well and cleaning the bank premises and her husband was working as a canteen boy and she is not aware as to how her husband was engaged by the bank.

6. No oral evidence has been adduced by the party no.1.

7. At the time of argument, it was submitted by the learned advocate for the petitioner that the workman joined the services of the party no.1 in the year 1985 as a waterman-cum-sweeper-cum-messenger in class-IV category and worked till 1988 and he had completed more than 240 days of continuous service and the work, which he was performing was of regular in nature and was available round the year and the workman had acquired the status of permanent employee and as per the provisions of standing orders, which are applicable to party no.1, workman having completed 240 days of continuous service in a calendar year is deemed to be a permanent employee and the workman was being paid his salary on vouchers and on 02.08.2004, the workman was asked to change his salary vouchers, but the workman did not agree for the same, so his services came to be terminated orally without compliance of the mandatory provisions of sections 25-F and 25-G of the Act and before termination of his services, neither one months' notice nor one month's wages in lieu of notice nor retrenchment compensation was offered to him and as such, the termination was illegal and though the workman made representations and sent a legal notice to party no.1, no action was taken by the party no.1 to reinstate the workman and as the termination of the workman was illegal, the legal heirs of the deceased workman are entitled for the monetary benefits from the date of the illegal termination till the death of the workman.

8. Per contra, it was submitted by the learned advocate for the party No. 1 that the workman was working as a canteen boy with the LIC and he was not an employee of the Bank and in any case, the workman had not completed 240 days in the preceding 12 calendar months from the date of non-renewal of the contract engagement

and for supply of drinking water and to clean the branch premises, in the month of July, 2003, the workman was engaged for two days per week on oral contract at the rate of Rs. 500 per month and such engagement was made till July, 2004 and the engagement was purely on temporary basis and since August, 2004, water supply to the branch was restored, his oral contract was not renewed and there was no termination of the workman from services and so far the work of canteen boy is concerned, the workman left the same on his own volition and after the legal notice issued by him, though he was asked to rejoin as the canteen boy, he did not join and as the workman was not entitled to any relief, his legal heirs are also not entitled to any monetary benefits.

In support of the contentions, the learned advocate for the party no.1 placed reliance on the decisions reported in (2005) 5 SCC-535 (State Bank of India Vs. State Bank of India Canteen employees union).

9. It is to be mentioned here that the party no.1 has claimed that the workman was working as a canteen boy and the witness examined by the legal heirs of the deceased workman has admitted the same in her cross-examination. However, in view of the specific pleading by party no.1 that the deceased workman was engaged from July 2003 to July 2004 to supply drinking water and to clean the branch premises and in view of the claim of the workman that his services were orally terminated on 02.08.2004 without compliance of the mandatory provisions of section 25-F and 25-G of the Act, even though he had completed 240 days of work, the only question remains for consideration is as to whether the deceased workman was entitled for the benefits of section 25-F of the Act

9. It is well settled by the Hon'ble Apex Court in catena of decisions that, "Onus lies upon claimant to show that he had in fact worked for 240 days in a year preceding his termination and in absence of proof of receipt of salary or wages or record of appointment, filing of an affidavit by the workman is not sufficient evidence to prove that he had worked for 240 days in a year preceding his termination."

So, keeping in view the settle principles as mentioned above, now, the present case in hand is to be considered.

10. It is to be mentioned that in para 1 of the statement of claim, it is claimed that the workman joined as a waterman-cum-sweeper-cum-messenger with party No.1 in 1985 and worked continuously till 1988. In para 3 of the statement of claim, it is claimed that the workman worked continuously with party No.1 since 1991 to July, 2004 and his services were terminated orally on 02.08.2004. However, the documents filed by the workman, which were admitted into evidence on admission by party No.1 show such claims not to be true. The copy of the legal notice issued by the workman to party No.1 dated 28.08.2004 has been

marked as Ext. W-I. In Ext. W-I, it has been mentioned that the workman was posted at Dhaman branch of S.B.I. in the year 1985 and his appointment was on daily rated basis and he worked continuously without any break from 1985 to 1991 and in 1991, his services were terminated orally and after several representations, he was reinstated in the year 1999 and worked till 31.07.2004 and on 31.07.2004, his services were terminated orally. The copy of the order passed by the Hon'ble High Court in Writ Petition No.4155/2006 has been marked as Ext. W-V. From Ext. W-V, it is found that in the said writ petition, the workman had pleaded that he joined the service in the year 1986 as waterman/sweeper-cum- messenger and served till 1988 and thereafter again served from 1991 to 2004. It is clear from the materials on record that the stands taken by the workman regarding the periods of his engagement were not consistent.

11. Apart from the oral evidence of Smt. Shobha, some documents have been produced in support of the claim made by the workman. The five documents admitted in evidence and marked as Exts. W-I to W-V do not relate to the working days of the workman. The said documents do not show that the workman had actually worked for 240 days in any calendar year or in the preceding 12 calendar months of the alleged date of termination i.e. 02.08.2004.

On the other hand, the documents produced by party no.1 have been admitted into evidence and marked as Exts. M-I to M-XXIX on admission. Out of the said documents, documents Exts. M-I to M-XXVI are debit vouchers under which wages of Rs. 500 was paid to the workman, month wise for the period from July, 2003 to July, 2004. On perusal of the said documents, it is found that the workman was engaged and paid for two days per week from July, 2003 to July, 2004. On calculation, it is found that he worked for 56 days in total during the said period. From the evidence on record, it is found that the legal heirs of the deceased workman have failed to prove that in fact the workman had worked for 240 days in the preceding 12 calendar months of the alleged date of his termination i.e. 02.08.2004. So, the provisions of section 25-F of the Act do not apply to the case of the workman.

In this case, no evidence has been adduced to show that except the workman any other person was also engaged by the party no.1 or that any junior to the workman was retained by the party no.1 in service, though the services of the workman were terminated. Hence, provisions of section 25-G of the Act are also not applicable to the case of the workman. When the deceased workman was not entitled to the benefits of sections 25-F and 25-G of the Act, his legal heir are also not entitled to any relief. Hence, it is ordered :

ORDER

The action of the management of the State Bank of India, Nagpur in terminating the services of Shri Namdeo S/O Mahadeo Bokde with effect from 02.08.2004 is justified.

The deceased workman as well as the legal heirs of the workman are not entitled to any relief.

J. P. CHAND, Presiding Officer

नई दिल्ली, 24 अप्रैल, 2014

का.आ. 1287.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पालवान ग्रामीण बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, चैन्नई के पंचाट (संदर्भ संख्या 33/2011) को प्रकाशित करती है जो केन्द्रीय सरकार को 31/3/2014 को प्राप्त हुआ था।

[सं. एल-12011/33/2010-आईआर (बी-1)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 24th April, 2014

S.O. 1287.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 33/2011) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure in the Industrial Dispute between the management of Pallvan Grama Bank and their workmen, received by the Central Government

o n
31/3/2014.

[No. L-12011/33/2010-IR (B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL- CUM- LABOUR COURT, CHENNAI

Tuesday, the 4th March, 2014

PRESENT :

K. P. PRASANNA KUMARI, Presiding Officer

Industrial Dispute No. 33/2011

[In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), between the Management of Pallavan Grama Bank and their workman]

BETWEEN :

The General Secretary	:	1 st Party/Petitioner
Pallavan Grama Bank		Union
Employees Association		
30-a, Mahaboob Ali Nagar,		
Karimangalam-635111		
Dharamapuri District,		
Tamil Nadu		

AND

The Chairman : 2nd Party/Respondent
Pallavan Grama Bank,
Head Office, No. 6,
Yercaud Road, Hasthampatti
Salem-636007

Appearance :

For the 1st Party/ : M/s. K.M. Ramesh,
Petitioner Union Advocates
For the 2nd Party/ : Sri L. Jayakumar &
Management Associates, Advocates

AWARD

The Central Government, Ministry of Labour & Employment vide its Order No. L-12011/33/2010-IR (B-I) dated 29.03.2011 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is :

“Whether the action of the management of Pallavan Grama Bank, in not evolving/framing a negotiated transfer policy, is legal and justified? To what relief the Union is entitled?”

2. On receipt of the Industrial Dispute this Tribunal has numbered it as ID 33/2011 and issued notice to both sides. Both sides have entered appearance through their counsel and have filed their claim and counter statement respectively. Subsequent to the filing of the Counter Statement by the Respondent, the petitioner has filed rejoinder.

3. The averments in the Claim Statement filed by the petitioner are these:

The petitioner is the General Secretary of Pallavan Grama Bank Employees Association. It is a recognized union and is a collective bargaining agent of the employees working in Clerical and Sub-Staff cadre in the Respondent Bank. The Respondent Bank came into being by amalgamation of Adhiyama Grama Bank and Vallalar Grama Bank in 2006. The total number of employees in Clerical and Sub-Staff cadre working in the Respondent Bank is 162. The petitioner association is having a membership of 122. After the amalgamation, the new entity has been given extended jurisdiction covering almost half of the State of Tamil Nadu. So there is need for a fool proof and transparent policy for transfer. The efforts of the petitioner to negotiate with the Respondent and evolve a transparent transfer policy did not materialize. The petitioner has submitted a draft transfer policy for the consideration of the Respondent. Even though the petitioner waited for 2 years, there was no positive response from the Respondent. In March 2011, the Respondent has issued circular to the effect that the

members of the staff who wants transfer should apply agreeing to forgo TA, DA and joining time. The action of the Respondent amounts to abuse of managerial power and is also unfair labour practice. In the circumstance the petitioner has raised the dispute. On failure of the conciliation proceedings the matter has been referred to this Court. Re-deployment of Award Staff on a regular periodicity for the parent bank itself is confined only to the Clerical Staff. The Sub-Staff are exempted from its purview. The action of the Respondent in not agreeing to have a negotiated transfer policy is illegal and unjustified. In the circumstances, an order may be passed framing a transfer policy for the employees of the Respondent Bank.

4. The Respondent has filed Counter Statement contending as follows:

The Respondent has its branches even in remote rural areas. Thus the Respondent is fulfilling the primary objective of serving the rural population. Almost all the branches of the Respondent have one Manager and one Clerk-cum-Cashier only. It has 178 offices, 139 Clerical Staff and 17 Subordinate Staff as on 31.07.2011. The Clerical and Subordinate Staff are collectively referred to as Award Staff. The size of the Respondent is too small to provide for shuffling its staff as per strict and rigid transfer regulatory measures by means of a proclaimed transfer policy. A comparison of the Respondent Bank with its sponsor bank, the Indian Bank is not possible. Indian Bank is one which is spread across the country and has presence in all the major cities and also urban and semi-urban centers and has thousands of employees. So it can formulate a reasonably valid transfer policy unlike in the case of the Respondent. The Respondent was constrained to reject the Draft Transfer Policy presented by the petitioner. All transfers are made only for administrative purposes and for office exigency. As per the Pallavan Grama Bank (Officers and Employees) Service Regulations no joining time shall be admissible to an employee if the transfer does not involve posting to a different place, the posting is of temporary nature, if the transfer is on his own request or if the transfer is within the same panchayat, municipality or urban agglomeration or municipal corporation or town or city. The postings in the bank are transferable and the employees have no vested right to remain posted at a particular place. It is the prerogative of the employer to transfer an employee on administrative exigencies. The petitioner is not entitled to any relief.

5. In the rejoinder filed, the petitioner reiterated the case in the Claim Statement and also denied the averments in the Counter Statement.

6. The evidence in the case consists of oral evidence of WW1 and also the documents marked as Ext.W1 to Ext.W11 and Ext. M1.

7. The points for consideration are :

- (i) Whether the Respondent Bank is justified in not evolving a transfer policy for its employees?
- (ii) Whether a transfer policy is to be framed for the employees of the Respondent?

The points

8. The petitioner, the Pallavan Grama Bank Employees Association claims that it has a membership of 122 out of the total number of 162 Clerical and Sub-Staff cadre of the Respondent Bank. The grievance of the petitioner is that even though a request has been made by it and a draft transfer policy has been submitted to the Respondent, the Respondent has refused to consider it and evolve a transfer policy. It is reasoned by the petitioner that the parent bank, the Indian Bank is having transfer policy and the Respondent Bank also should have framed a policy in the same lines.

9. According to the Respondent it cannot be compared with the Parent Bank which is a large institution with several branches all over the country and thousands of employees which makes it possible for that to have a transfer policy of its own. It is stated on behalf of the Respondents that such a policy in tune with the policy framed by the Parent Bank will not be practical for the Respondent Bank since it is quite small in size with only few branches when compared with the Parent Bank. It is stated in the Counter Statement that it is the prerogative of the employer to transfer its employees and that such transfers are made only on administrative contingencies.

10. The General Secretary of the Petitioner Association has filed Proof Affidavit in lieu of Chief Examination stating the necessity of framing a transfer policy. He has been examined as WW1. Ext.W1 to Ext.W7 are all copies of letters written by the petitioner to the Respondent listing its demands including a transfer policy for Award Staff. Ex.W8 is the Minutes of the Meeting held between the Respondent and the representatives of different associations including that of the petitioner. Ext.W9 shows that the petitioner is a registered association. Ext.W10 gives a list of members of Petitioner's Association. This certainly shows that the petitioner is an association having a majority of membership among the award staff of the Respondent Bank.

11. Initially, before the Respondent Bank was constituted by amalgamating two banks, the previous entities were working within a limited area. During the period, the employees will have to work in a limited area only even if they will be transferred periodically. After amalgamation of the two smaller banks and constitution of the Respondent Bank, the area of business for the Bank has become larger. Accordingly, the chance of the employees being transferred to farther and remote areas have occurred. It is in this circumstance the petitioner

seems to have requested for evolving a transfer policy in respect of the Clerical Staff of the Bank. According to the petitioner, the Sub-Staff should not be subjected to any transfer at all, this having been the policy adopted by the Parent Bank and is also a term agreed upon by the Bipartite Settlement entered into between the different associations and the Bank Managements. The stand of the Respondent is that there is no necessity for framing a transfer policy. But such a situation would not be in the interest of the employees or even in the interest of the Management. If a transfer policy is not there, it is always possible that the Management would act in a high handed manner subjecting its employees to transfer without resorting to any restrictions. Even in the Counter Statement what is stated by the Respondent is that it is the prerogative of the Respondent to transfer its employees. No doubt it is the prerogative of the employer to effect transfers. However, this could not be done in accordance with the whims and fancies of the employer. At the same time, the employee could not be expected to remain at the same place, work in the same place or claim that he should not be subjected to any transfer. It will certainly become necessary for the employer to transfer its employees for reasons of administrative exigencies and also in the interest of business. For an institution which is engaged in the business of banking, it will not be in its interest to retain an employee in the same branch or station also. So definitely there should be certain guidelines for the transfer of the employees. As directed by this Tribunal the petitioner has placed before me a copy of the transfer policy of the Indian Bank which according to it is to be accepted as a model for the transfer policy of the Respondent also. A copy of the draft transfer policy said to have been supplied by the petitioner to the Respondent also is furnished. Subsequently, the Respondent seems to have finalized a transfer policy and furnished it to the petitioner. This does not seem to be on the basis of any discussion. It is not seen accepted by the employees also. Taking into consideration the draft transfer policy of the petitioner, the policy evolved by the Respondent and also the transfer policy of the Indian Bank referred to by the petitioner, a transfer policy is framed as below in respect of the Office Assistants (Clerical Staffs). The Office Attendants are exempted from the purview of transfer unless on request, their number being only very few. The transfer policy is named Transfer Policy in respect of Office Assistants.

I. PERIODICAL TRANSFER

1. All Office Assistants who have completed 5 years of effective service in a branch would come under the purview of periodical transfer.

Note :

In reckoning effective service, leave availed upto 72 days during each year would be allowed. If leave is availed beyond 72 days, it would

require additional one year of service in order to become eligible for transfer. Casual leave would not be reckoned in the stipulated 72 days.

2. Periodical transfers are to be considered to a distance below 75 kms.
3. The following categories of employees would be exempted from periodical transfer.
 - (a) Male employees above the age of 57 years and female employees above the age of 55 years.
 - (b) Widows for 10 years from the date of the calamity.
 - (c) Widowers for 5 years, if they are having school going children upto to High School.
 - (d) Employees with cardiac ailment who had undergone surgery for three years.
 - (e) Employees suffering from Cancer, Kidney Ailment involving dialysis and those having paralysis.
4. The transfer of physically challenged employees should be as per the government guidelines.
5. The transfer of employees having school going mentally retarded children also will be as per government guidelines.
6. Periodical transfer orders shall be issued before March 31st and shall be implemented before April 30th.
7. Joining time, TA & DA and mid academic transfer allowances shall be given as per Pallavan Grama Bank (Officers and Employees) Service Regulations 2010 and 9th Bipartite Settlement.
8. Any transfer will be subject to availability of vacancy or exigencies.

II. REQUEST TRANSFER

1. An employee can submit his request for transfer on completion of 6 months service in a particular branch. The request will be considered only on completion of two years of service in the branch. An employee can avail three such transfers on request in the entire career.
2. The request of a widow for transfer immediately after the calamity shall be considered outstepping the priority.
3. An employee is eligible to request for transfer to join his/her spouse subject to the condition that the spouse is working in Government Service/Government Undertakings/Quasi

Government Organizations Public limited Companies and Govt. or Govt. Aided Schools. The option is limited to twice in one's career.

II. TRANSFER TO REMOTE AREA BRANCHES

The following branches are classified as remote area branches:

- (i) Kavanur
- (iii) M. Kunnathur
- (iv) Adhaiyur
- (v) Neruppur
- (vi) Anchetty
- (vii) Gumulapuram and
- (viii) Melkalpoondi

1. Employees below the age of 50 only will be posted in the remote area branches. Female employees will not be posted to the remote branches except on request.
2. Employees who have completed full term of service in the remote area branches will be given their choices, three branches, which will be considered depending upon the vacancy. This will not amount to request transfer.
3. Those employees who served in remote area branches shall not be posted in remote area branches a second time unless his services are required for any special assignment.

The award is passed accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 4th March, 2014).

K. P. PRASANNA KUMARI, Presiding Officer

Witnesses Examined:

For the 1 st Party/ Petitioner Union	: WW1, Sri A. Kaliyulla
For the 2 nd Party/ Management	: None

Documents Marked :

On the petitioner's side

Ex.No.	Date	Description
Ex.W1	21.10.2006	Letter from First Party to the Second Party
Ex.W2	26.10.2006	Letter from Saptagiri Grameena Bank to the General Secretary, Saptagiri Grameena Bank Employees Union enclosing Draft Policy
Ex.W3	15.11.2006	Letter from First Party to the Second Party Bank

Ex.W4	30.11.2006	Letter from First Party to the Second Party
Ex.W5	17.04.2007	Letter from First Party to the Second Party
Ex.W6	27.11.2008	Letter from First Party to the Second Party
Ex.W7	02.09.2011	Letter from First Party to the Second Party
Ex.W8	02.01.2007	Minutes of the Meeting held between First Party and Second Party
Ex.W9	06.09.2007	Copy of Registration Certificate of the First Party
Ex.W10	xxxxxxx	List of Members of the First Party Union
Ex.W11	12.03.2013	Copy of Circular No. 195/2012-13 issued by the Second Party Bank

On the Management's side

Ex.No.	Date	Description
Ex. M1	-	Pallavan Grama Bank (Officers and Employees) Service Regulations, 2007.

नई दिल्ली, 24 अप्रैल, 2014

का.आ. 1288.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण 1, चण्डीगढ़ के पंचाट (संदर्भ संख्या 97/2012) को प्रकाशित करती है जो केन्द्रीय सरकार को 4/4/2014 को प्राप्त हुआ था।

[सं. एल-12012/67/2012-आईआर (बी-1)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 24th April, 2014

S.O. 1288.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 97/2012) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Chandigarh, now as shown in the Annexure in the Industrial Dispute between the management of State Bank of India and their workmen, which was received by the Central Government on 4/4/2014.

[No. L-12012/67/2012-IR (B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE

**BEFORE SHRI SURENDRA PRAKASH SINGH,
PRESIDING OFFICER, CENTRAL GOVT.
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-I,
CHANDIGARH**

Case No. ID 97 of 2012

Reference No. L-12012/67/2012-IR(B-I)
dated 21.02.2013

Smt. Maya Devi wife of
Late Shri Om Parkash,
resident of Village Babyal,
Ambala, Haryana ... Workwoman

Versus

1. The Branch Manager,
State Bank of India,
Branch-Babyal,
Ambala, Haryana ... Management

APPEARANCES:

For the Workman/Union : None.

For the Management : Shri S.K.Gupta Advocate

Award Passed On: 4.4.2014

Government of India Ministry of Labour vide notification No. L-12012/67/2012-IR(B-I) dated 21.02.2013 has referred the following dispute to this Tribunal for adjudication :

“Whether the demand of the workwoman Smt. Maya Devi W/O Late Shri Om Parkash for reinstatement and regularization in service with full back wages with the management of State Bank of India, Babyal, Ambala, Haryana w.e.f. 1971/1990 as sweeper is just, fair and legal? If not, what relief the workwoman is entitled to?”

2. Case repeatedly called. None has put up appearance on behalf of the workman. Registered notice sent to the address of the workman as mentioned in the reference received back un-served with the remark of the postal authorities that address is incomplete. There is no other address of the workwoman is available with this office.

3. In view of the above, the present reference is returned to the Central Govt. for want of service of the workwoman. The reference is disposed off accordingly. Central Govt. Be informed. Soft as well hard copy be sent to the Central Govt. for publication.

Chandigarh

4.4.2014

S. P. SINGH, Presiding Officer

नई दिल्ली, 24 अप्रैल, 2014

का.आ. 1289.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एन. एफ. रेलवे के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, गुवाहाटी के पंचाट (संदर्भ संख्या 39/2013) को प्रकाशित करती है जो केन्द्रीय सरकार को 06/01/2014 को प्राप्त हुआ था।

[सं. एल-41011/49/2013-आईआर (बी-1)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 24th April, 2014

S.O. 1289.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 39/2013) of the Central Government Industrial Tribunal-cum-Labour Court, Guwahati, as shown in the Annexure in the Industrial Dispute between the management of N. F. Railway and their workmen, which was received by the Central Government on 06/01/2014.

[No. L-41011/49/2013-IR (B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE

IN THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL- CUM-LABOUR COURT, GUWAHATI, ASSAM

Present : Shri L.C.Dey, M.A., LL.B., Presiding Officer
CGIT-cum-Labour Court, Guwahati.

Ref. Case No. 39 of 2013

In the matter of an Industrial Dispute between :-

The Workman Sri Gautam Ch. Das

versis

The Management of N. F. Railway, Maligaon, Guwahati

Date of Award : 27.12.2013

AWARD

1. This Reference has been initiated on an Industrial Dispute between the Management of N.F.Railway, Maligaon, Guwahati represented by General Manager (P), N.F.Railway, Maligaon, Guwahati and their workman Sri Gautam Chandra Das on account of not granting HRA to the workman by the Management, which was referred by the Ministry of Labour, Government of India, New Delhi vide their order No. L-41011/49/2013-IR(B-I) dated 12.07.2013. The Schedule of this Reference is as under.

SCHEDULE

“Whether the action of the management of N.F.Railway, Maligaon, Guwahati for not granting HRA to Sh. Gautam Chandra Das w.e.f. 15.2.2010 to

23.7.2010 is legal and justified? To what relief the workman is entitled ?”

2. The workman Gautam Chandra Das represented by the General Secretary, Rail Mazdoor Union, N.F. Railway, Maligaon in his claim statement mentioned that on getting information that some workers were going to be recruited by the Officers Club, North East Frontier Railway (in short NEFR, Maligaon), he approached the Club Management for job and accordingly he was employed as worker. Thereafter he came to know that there was probability of filling up of some posts of substitute Emergency Peon under Chief Commercial Manager, NEFR and he applied for the Post. Ultimately he was appointed as Substitute Emergency Peon attached to the Chief Commercial Manager, NEFR with effect from 11.11.2009 in the pay scale of Rs.5200-20200 + Grde Pay Rs.1800. The workman was also employed in the Post of Substitute Emergency Peon in the establishment of CCM, N.F.Railway, in the pay scale of Rs. 2550, 3200 against some terms and conditions issued by the General Manager (P), Maligaon. The then prevailing mode of engagement of Substitute Emergency Peon was that initial appointment was made for 3 months but extended for further period depending on the satisfaction of the officer for whom in his official capacity the service of the said Substitute Emergency Peon are meant for till he attain the temporary servant status after 120 days continuous satisfactory service; and the officer in whose official capacity the said Substitute Emergency Peon is attached is to certify the satisfactory service of the Substitute Emergency Peon serving under him at the end of 90 days of his service and thereafter his service was extended further. On completion of his continuous satisfactory service for 120 days the workman was given status of temporary Railway employee with effect from 11.3.2010. Thereafter the Management without following the due procedure established by law and the relevant Railway Rules framed there under discharged the workman from service by an order dated 23.7.2010. The workman was not allotted to Railway Quarter inspite of his application dated 23.7.2010 and hence, the workman was entitled to house Rent Allowance w.e.f. 15.2.2010 but he was not given any house rent allowance from 15.2.2010 to 23.7.2010. Thereafter the matter came before the Assistant Labour Commissioner (C), Guwahati for conciliation but it failed. The workman averred that as per the Rules framed from time to time by the Railway Board he is entitled to the house rent allowance but the Management illegally deprived him from getting the same. Hence, the workman prayed for granting him house rent allowance for the period with effect from 15.2.2010 to 23.7.2010 with interest.

3. The Management did not submit any written statement inspite of getting sufficient opportunity and accordingly the case was fixed for filing W.S. by the Management.

4. During pendency of the reference the matter has been taken up before the Lok Adalat held on 27.12.2013. Upon sincere efforts & endeavor of the learned Conciliators the dispute has been settled up amicably. The terms of settlement arrived at between the parties is that the workman Gautam Chandra Das shall submit his requisite application within a week claiming house rent allowance for the period of his eligibility, and the Management shall consider his application within a period of one month from today as per law and the relevant rules of Railways and to communicate the decision to the workman and to make necessary payment.

5. In view of the above settlement this reference is disposed off on compromise. A Memorandum of Settlement is prepared and duly signed by both the parties along with the learned Conciliators and the Presiding Officer which is kept on record and it will form a part of the record as well as the Award.

6. Send the Award along with a copy of memorandum of settlement to the Ministry as per law.

Given under my hand and seal of this Court on this 27th day of December, 2013, at Guwahati.

L. C. DEY, Presiding Officer

**BEFORE THE LOK ADALAT IN RELATION TO THE
CGIT-CUM-LABOUR COURT, KENDRIYASHRAM
SADAN, BIRUBARI, GUWAHATI**

Date : 27.12.2013

Ref. Case No. 39 of 2013

Management of **-Vrs-** Sri Gautam
N. F. Railway, Maligaon Ch. Das

May it please your honour,

We the parties above named have arrived at a compromise/conciliation/settlement in the above Referred Reference Case/Misc Case/dispute as per terms and conditions mentioned below. No coercion or force/temptation/influence has been made to any parties to arrive at the compromise/conciliation.

We therefore request to record the compromise/conciliation/settlement made before the Lok Adalat and pass order/award accordingly today itself.

Terms of compromise/conciliation

Settled on the terms and conditions that the workman Sri Gautam Chandra Das shall submit his requisite application with seek for his claim of HRA for the period of his such eligibility and the Management shall consider his application within a period of one month from today as per law N. F. Railway and communicate the decision to the workman and to make necessary payment.

—Sd—eligible

Signature of Management/
Opposite Party/Respondent

—Sd—eligible

Signature of Union/
Workman/Petitioner/
Applicant

Signature of Advocate for
the Management/Opposite
Party/Respondent

Signature of Advocate
for the Union/Workman/
Petitioner/Applicant

—Sd—eligible

Signature of conciliators

नई दिल्ली, 24 अप्रैल, 2014

का.आ. 1290.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बनारस स्टेट बैंक लि. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, लखनऊ के पंचाट (संदर्भ संख्या 138/2001) को प्रकाशित करती है जो केन्द्रीय सरकार को 23/03/2014 को प्राप्त हुआ था।

[सं. एल-12012/298/2001-आईआर (बी-1)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 24th April, 2014

S.O. 1290.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 138/2001) of the Central Government Industrial Tribunal-cum-Labour Court, Lucknow now as shown in the Annexure, in the Industrial Dispute between the management of Benares State Bank Ltd. and their workmen, which was received by the Central Government on 23/3/2014.

[No. L-12012/298/2001-IR (B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE

**CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, LUCKNOW**

PRESENT : Dr. MANJU NIGAM, Presiding Officer

I.D. No. 138/2001

Ref. No. L-12012/298/2001-IR(B-I) dated: 30.08.2001

BETWEEN

Shri Munna Lal
Village, Lodhan P.O. Shivpur,
Distt. Varanasi (U.P.) – 221001.

AND

The Asstt. General Manager
The Benares State Bank Ltd.
Head Office, S-20/52, A.K. Varuna Bridge, Cantt.
Varanasi (U.P.) – 221 001.
after amalgamation, Bank of Baroda
Regional Office (Varansi Region)
Assi Road, Lanka
Varanasi - 2366150

AWARD

1. By order No. L-12012/298/2001-IR(B-I) dated: 30.08.2001 the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between Shri Munna Lal, Village, Lodhan P.O. Shivpur, Distt. Varanasi (U.P.) and the Asstt. General Manager, the Benaras State Bank Ltd. , Head Office, S-20/52, A.K. Varuna Bridge, Cantt., Varanasi (U.P.) after amalgamation, Bank of Baroda, Regional Office (Varansi Region), Assi Road, Lanka, Varanasi for adjudication.

2. The reference under adjudication is:

“WHETHER THE ACTION OF THE MANAGEMENT OF BENARES STATE BANK LTD. IN SUSPENDING AND DISMISSING SHRI MUNNA LAL IS JUSTIFIED? IF NOT, WHAT RELIEF IS HE ENTITLED?”

3. It is admitted case of the parties is that the workman, Munna Lal, was working as subordinate staff and was posted at Shivpur branch, Varanasi of the Benaras State Bank Limited, after amalgamation, Bank of Baroda when he was served upon a charge sheet 20.12.96 for alleged misconduct of gross negligence by the Assistant General Manager. Shri Mohd. Asad Jan was appointed as Inquiry Officer to inquire into the charges; who after conducting the inquiry found the charges to be proved and submitted his inquiry report before disciplinary Authority. On receipt of findings, the Disciplinary Authority issued a show-cause notice dated 30.08.99, proposing punishment of dismissal from the service of the bank with an opportunity to personal hearing. Thereafter, the order dated 30.09.99 was passed by the Disciplinary Authority, inflicting punishment of ‘dismissal from services of the bank with immediate effect’. Aggrieved from impugned order dated 30.09.99, the workman preferred an appeal before Appellate Authority, which was rejected vide order dated 01.05.2000.

4. It is case of the workman is that the management conducted the enquiry proceedings in violation to the principles of natural justice. He has further alleged that the management did not provide him the documents to enable him to submit his explanation. It has also been alleged that the findings of the Inquiry Officer are also

perverse as he did not consider the evidence of the Hand Writing Expert, MW-1 in proper way. Accordingly the workman has prayed to set aside the impugned order dated 30.09.99 with consequential benefits.

5. The management of the Benaras State Bank Limited, after amalgamation, Bank of Baroda has denied the allegation of the workman with submission that the workman was afforded all reasonable opportunity to defend himself and was supplied all relevant papers etc. and the inquiry was conducted fully in accordance with the principles of natural justice. It is also submitted by the Bank that Inquiry Officer after taking into consideration the entire material on the record submitted his report to the Disciplinary Authority, holding charges as proved; and the Disciplinary Authority after giving show-cause to the workman rightly imposed the punishment vide order dated 30.09.99 and there is no illegality with it. Accordingly, the management of the Bank has prayed that the claim of the workman be rejected without any relief being extended to the workman.

6. The workman has filed rejoinder whereby apart from reiterating its averments in the statement of claim has introduced nothing new.

7. The management of the Bank submitted photo copy of the entire enquiry proceedings in support of their respective case. Following preliminary issue were framed on 27.06.2003 by the Tribunal:

- (i) Whether the appointment of Sri Mohd. Asad Jan as Enquiry Officer vide letter dated 31.1.97 is illegal on the ground that Asstt. GM has no power to appoint the Enquiry Officer?
- (ii) Whether enquiry report of the Enquiry Officer was in violation of the principle of natural justice as has been alleged by the workman.
- (iii) Whether the findings of the Enquiry Officer is perverse as alleged by the workman.

8. The workman examined himself whereas the management examined Mohd. Asad Jan, Inquiry Officer, in support of their stand on preliminary issue. After hearing arguments of the parties, preliminary issues were decided in favour of the workman vide order dated 20.12.2005, which reads as under:

“Enquiry report of the Enquiry Officer is set aside. The bank management is directed to file the list of witnesses together with documents on 21.2.2006. Also fixed 1.3.06 for taking of photograph by the experts of parties if they feel so.”

9. Accordingly, the case was listed on 01.03.2006 with direction to the management to file documentary evidence and list of witnesses in support of their charge sheet before this Tribunal. The management filed the list of witnesses dated 04.04.2006, paper No. C-41, disclosing

name of Shri C.B. Singh, Manager & Hand Writing Expert. The management filed the photocopy of following documents vide list dated 16.05.2006, paper No. C-44 in support of its case.

- (i) Form No. 93 A/c opening form for current A/c of Noori Chhapai Kendra.
- (ii) Deposit receipt (pay in slip) of Noori Chhapai Kendra dated 23.9.95.
- (iii) Specimen signature card of the A/c bearing serial No. 365.
- (iv) Current A/c Cheques No. 1506894 dated 29.11.95 Rs. 1.60 lac.
- (v) Cheque No. 1506879 dated 7.10.95 Rs 80 lac.
- (vi) Cheque No. 1506880 dated 09.10.95.
- (vii) Cheque No. 1506887 dated 21.10.95.
- (viii) Saving Bank A/c cash pay in slips for Rs. 6500 dated 17.10.95.
- (ix) Cash Pay in Slip Rs. 4000/- dated 25.10.95 deposited by Munna Lal.
- (x) Withdrawal slip of Munna Lal dt. 22.12.97.
- (xi) Withdrawal slip of Sri Munna Lal dt. 8.12.97.
- (xii) Withdrawal slip of Sri Munna Lal dt. 10.11.97.
- (xiii) Application of Sri Munna Lal dated 16.9.91.
- (xiv) Application of Sri Munna Lal dated 1.1.88.
- (xv) Application of Sri Munna Lal dated 12.4.88.
- (xvi) Application of Sri Munna Lal dated 13.8.84.
- (xvii) Application of Sri Munna Lal dated 17.5.85.
- (xix) Credit Cash Scroll page No. 176 dated 23.9.95.

The management's hand writing expert took photographs of the disputed and admitted specimen and was produced for cross-examination along with examination report. The management also examined another witness viz. Shri Abhijeet Das Gupta in support of its charges against the workman.

10. In rebuttal, the workman got his handwriting examined on the disputed and admitted documents by a Hand Writing Expert viz. Shri Satish Dayal. The workman also produced Shri Satish Dayal for cross-examination.

11. The parties cross-examined the witnesses of each other and argued their case. Heard, the authorized representatives of the parties and perused entire evidence available on record.

12. The management of the erstwhile Benaras State Bank Limited has come up with the case that the workman, Munna Lal a subordinate staff, working as officiating clerk during period from 19.09.92 to 31.07.96, observed gross negligence to his duties and was indulged in the act that

was prejudicial to the interest of the Bank. In the charge sheet dated 20.12.1996. It is mentioned that the workman did not observe the norms related to opening of a current account, which resulted into encashment of forged drafts, which resulted financial loss to the bank amounting to Rs. 12.66 Lakhs. As per pleadings of the Bank the above act of the workman comes within the purview of gross-misconduct as provided in clause 19.5 of sub para 19.5 of First Bipartite Settlement dated 19.10.1966. The management has filed photocopy of number of documents through list paper No. 6 to 6/140 and C-44 in support of the charge sheet and their case, which included account opening form, copy of specimen signatures, cheques and applications of the workman. It is also the case of the management that apart from the workman three other officials and two officers who were involved in said fraud were dismissed from bank's services after holding domestic inquiry. The Bank also lodged an FIR in this matter against the officials and the officers involved in the alleged fraud case.

13. Per contra, the workman has come forward with the case that he was appointed in the Bank as subordinate staff (Peon) and worked as such and never officiated on the post of Clerk or processed the account opening form. It is also the case of the workman that he neither made any entry on the disputed cheques nor made signature of the drawer on the said cheques. Further, the workman has also contended that the management lodged an FIR in the alleged fraud case against all the officials and officers, involved in the matter, sparing him and all were found guilty by the Court. But, his case is different from other persons involved in the case. The workman has contended that since no FIR was lodged against him by the management this goes to show that there was no evidence of his involvement in the incident; even then the management has penalized him illegally and arbitrarily. It is also contended by the workman that even the police, after investigating the case, did not file any charge sheet against him before the competent criminal court for his involvement in the alleged fraud.

14. I have given my thoughtful consideration to the rival contentions of the parties and perused the evidence available on record in light thereto.

15. The management has examined two witnesses in support of their case to prove the charges leveled in the charge sheet before this Tribunal. The management witness, Shri Abhijeet Das Gupta, who was posted as Asstt. Manager (IR) in the Head Office of the Benaras State Bank in 1995-96 stated on oath that a fraud was committed in Shivpur branch of the bank in 1995. A fraudulent current account was opened in the name of Noori Chhapai Kendra by one Raja Ram and five lost draft were got encashed through said current account in connivance with the officials of the Bank, including workman, Munna Lal. It has been stated that the paper No. 84/1 is account opening

form and there is cutting in the 'title of account' and there should have been photo of the account holder on it but there is no photo on it. It was further stated that paper No. 84/2 is pay-in-slip, which bears 'cutting' in the name, but there is no initial on it. Neither the name of depositor nor his full signature was mention there. It has been stated that the workman, working as officiating clerk and even being aware of these short comings, made an entry on the Cash Credit Scroll at serial no. 31, page no. 176. He has very specifically stated that said entry was made by the workman because such an entry is made by the concerned clerk and the workman was working as officiating clerk on the said date. The management witness also stated that paper No. 84/3, which is specimen signature card bears cutting in its 'Title of Account' and there is no initial on it and there should be photograph of the account holder but there is no photograph on it. He further stated that paper No. 84/4 is cheque through which an amount of Rs. 1,60,000 was withdrawn from the account of Noori Chhapai Kendra on 29.11.95 and date of the cheque and amount in words and figures was being filled by the workman and as per Bank rules the same ought not to have been prepared by an employee of the bank. It was specifically stated that entries on 'pay in cheques', paper No. 84/5, 84/6 and 84/7 were made by the workman. It has also been stated by the management that workman deposited Rs. 4000 in to his account vide paper no. 84/9, which was received by him as financial benefit for opening the fraudulent account and encashing the cheques. It has also been stated by the management witness, Shri Abhijeet Das Gupta that three other officials viz. Shyam Ji Mishra, Mohan Lal Pandey and Jai Shankar Mishra and two officers viz. Sushil Chandra Pandey and Raja Ram were charge sheeted and were dismissed from the services. He has also stated that the bank lodged an FIR in this case. In cross-examination he has stated that from perusal of charge sheet it is evident that the designation of the workman is Peon i.e. a class IV employee. He also stated that the peon is not authorized to open the bank account. It was stated by the witness that he is not aware of the fact that the FIR which was lodged for alleged fraud included the name of workman, Munna Lal or not. He further stated that he did not conducted any inquiry in the matter nor was he the Inquiry Officer in the matter. The management witness admitted that the signatures of Raja Ram on cheques, paper No. 84/4 to 84/7 are not in the hand writing of Munna Lal. The witness also admitted that the bank made payment to the person whose signatures were inscribed on the cheque.

The other management witness viz. Shri S.P. Gupta, Hand Writing Expert corroborating his handwriting report, stated that the disputed writing on the documents are that of workman, Munna Lal. In cross-examination it was stated that he has examined the hand writing on the alleged four cheques i.e. of the date and amount of the cheque, in

figure and word only; and he neither examined the signatures of the account bearer nor the signature of the recipient on the back of the cheque.

16. In rebuttal, the workman has come forward with the evidence of its hand writing expert who has submitted report in favour of the workman. In the cross-examination he has stated that he examined disputed 'body writing' on cheques, paper No. 72/11 to 72/14 with admitted writing on paper No. 72/15 to 72/19 and found that the disputed writing on the cheques was not that of Munna Lal.

17. The case of the management rest on the pleading that the workman, Munna Lal while officiating as clerk, exhibited gross negligence to his duties on 23.09.95 when he over looked many short comings in the current account opening form/procedure in respect of M/s Noori Chhapai Kendra. The management's case is that the workman in this way assisted one Raja Ram in fraudulent withdrawal of Rs. 12.66 Lakhs. The workman has denied the allegations and this Tribunal after vitiating the domestic inquiry, conducted by the bank earlier, vide order dated 20.12.2005, took fresh evidence on the charges. During inquiry into the charges before this Tribunal both the parties examined their handwriting experts who have given report favourable to them.

18. The management has held the workman accountable and responsible towards his services, discharged as officiating Clerk during period 19.09.92 to 31.07.96 and particularly on 23.09.95 when the alleged fraudulent current account was opened by the workman. The workman has vehemently denied this fact that he ever helped or assisted in any way in opening the current account No. 365 The workman has also stressed on the fact that there was no FIR against him while the Bank lodged FIR against all the officials and officers, who were found involved in any way while opening the fraudulent account. This itself is sufficient to establish that he was not involved in the case.

In this regard the management witness, Shri Abhijeet Das Gupta stated that the workman's designation in the charge sheet is mentioned as 'Peon (subordinate) employee a class fourth employee'. Generally a peon is not assigned the duty for opening the bank account. Also, the management could not produce any order, directing the workman to officiate on the post of Clerk w.e.f. 19.09.92 to establish its contention that the workman was officiating on the post of Clerk. Likewise, there is no evidence on the record to show that while officiating on the post of Clerk the workman was entrusted with the duties of account opening etc.. Moreover, there is no evidence to show that the workman ever received any remuneration or honorarium or any other allowance towards officiating on the post of Clerk. Bank's being financial institutions where public money is kept has to observe a transparency and accuracy in its working so that accountability may be fixed.

Here in the present case in the absence of any order to officiate on the post of Clerk or any order regarding work allotment to the workman as officiating clerk; it cannot be well said that the workman was officiating on the post of Clerk and he was also entrusted with the account opening duties.

19. Further, the management has taken the plea that the workman has worked in connivance with the Raja Ram as the cheques through which money was withdrawn was in the hand writing of the workman. In this regard witness, Abhijeet Das Gupta has stated that as per bank Rules the employees of the bank should not fill the cheques and withdrawal forms of the customers. Also, during cross-examination it was admitted by him that the signatures of the account holder was not made by the workman and the payment was being made to the person who drew the money again goes to show that the workman was not involved in the matter at all.

20. The workman in his defence has pleaded that the management had filed an FIR against the officials and the officers, involved in the case; but the name of the workman was not included it nor did any criminal case was instituted against him by the police on investigation. The workman has contended that this move of the management of non-lodging an FIR, was due his non-involvement in the alleged fraud. In this regard the management has contended that the workman has been charged for misconduct and this has nothing to do with the non-lodging of FIR or non-existence of criminal case against him.

As per version of the management in the present case, the workman has been charged and punished for misconduct committed by him. Here in the present case, the fraud was committed with the connivance of the bank officials and officers wherein a fake current account was opened and few forged drafts were deposited in it. When the money born by the drafts was transferred to the account, the same was withdrawn. Therefore, the whole story of fraud initiates with the opening of the current account and the workman has been charged with charge of observing negligence the in account opening and thereby assisting in the fraud; then FIR against all including workman was obvious. The workman was spared by the management may be because the workman was not involved in the alleged opening of the account as there was no order to the workman for officiating as Clerk or any order entrusting the workman with the account opening work. When the workman was not given any order to officiate on the post of clerk nor was assigned the duty of opening the account, then he cannot be held responsible for negligence in opening the account.

Besides, the workman even as officiating clerk cannot be solely held responsible for irregularities and omissions in following the procedure while opening the

alleged account. Because it is not the clerk who orders for opening of the account. As per procedure of the bank, the clerk only process the case and presents the same before higher authorities/manager who after examining the case and satisfying themselves that all the formalities have been complied with and there is no infirmity with the form and procedure etc., put their signatures and allow the account opening. If there was any irregularity or omission with respect to the procedure for opening the account, the higher bank authorities either could have returned the same for correction/rectification or would have rejected the same. But no action was taken by the bank authority and it is not in the power of the clerk to reject any account opening application/form at his own. Hence, bank cannot hold the workman solely responsible for negligence in opening the alleged current account.

21. It is also the case of the management that the body of the four cheques, through which money was withdrawn from alleged current account No. 365, was in the hand writing of the workman, and the same was not permissible under Rules. If it is taken to be true that the alleged hand writing regarding mentioning the amount in word and figure was that of the workman, even then the workman could not be blame in view of the admission of the management witness that the signatures of the account holder was not made by the workman. It is also admitted that the signatures of the account holder viz. Raja Ram, on the front and back of the cheque, was not made by the workman and payment was made to the person who inscribed the signatures on the back. Hence, it could not be said that the workman was involved in the fraudulent withdrawal just because he assisted in filling few entries in the cheque, therefore, the punishment imposed appears to be disproportionate.

22. Also, the management has charged the workman of receiving proceeds of Rs. 6500 and Rs. 4000 for illegal works and depositing the same in his saving account in cash. In this regard the management witness has stated that said amounts were considered to be remuneration for assistance of the workman. He also stated that in 1995 the salary of the workman would have been 1000—1500 per month. But could not produce any salary slip or other documentary evidence to corroborate his statement that the said amount was the proceeds of the fraud.

23. Thus, in view of the facts and circumstances of the case and discussions made hereinabove, I am of the considered opinion that the management of the Bank of Benaras State Bank Limited, after amalgamation, Bank of Baroda failed to prove the charges before this Tribunal regarding alleged involvement of the workman showing gross-negligence in opening current account in the name of Noori Chhapai Kendera while officiating as Clerk on 23.9.95 as there was no order to the workman to officiate as Clerk nor he was entrusted with responsibility of

account opening. The bank also could not prove through some documentary evidence that the workman assisted the persons committing fraud in any way and got remuneration for same, mere assumptions are no substitute for proof. As when the charges are of criminal in nature the evidence produced should be beyond doubt. Hence, I come to the conclusion that the action of the management of the Bank of Benaras State Bank Limited, after amalgamation, Bank of Baroda in suspending and dismissing the workman, Munna Lal is neither legal nor justified; and accordingly, the workman, Munna Lal is entitled for reinstatement with consequential benefits including continuity in service and full back wages within six weeks from the date of publication of this award in the gazette, falling which same shall accrue simple interest @ 6% per annum. The reference is answered accordingly.

24. Award as above.

LUCKNOW

06th March, 2014.

Dr. MANJU NIGAM, Presiding Officer

नई दिल्ली, 24 अप्रैल, 2014

का.आ. 1291.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पंजाब नेशनल बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, कोलकाता के पंचाट (संदर्भ संख्या 32/2007) को प्रकाशित करती है जो केन्द्रीय सरकार को 24/4/2014 को प्राप्त हुआ था।

[सं. एल-12011/57/2007-आईआर (बी-II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 24th April, 2014

S.O. 1291.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 32/2007) of the Central Government Industrial Tribunal-cum-Labour Court, Kolkata as shown in the Annexure in the Industrial Dispute between the management of Punjab National Bank and their workmen, received by the Central Government on 24/4/2014.

[No. L-12011/57/2007-IR (B-II)]

RAVI KUMAR, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL
AT KOLKATA

Reference No. 32 of 2007

Parties : Employers in relation to the management of Punjab National Bank

AND

Their workmen

Present : Justice Dipak Saha Ray, Presiding Officer

Appearance :

On behalf of the : None
Management

On behalf of the : None
Workmen

State: West Bengal

Industry: Banking

Dated: 18th March, 2014.

AWARD

By Order No. L-12011/57/2007-IR(B-II) dated 26.10.2007 the Government of India, Ministry of Labour in exercise of its powers under Section 10(1)(d) and (2A) of the Industrial Disputes Act, 1947 referred the following dispute to this Tribunal for adjudication:

“Whether the claim of the union for regularization of service of Shri Ashok Kumar Bera, Part time Sweeper, on the post of peon of the Punjab National Bank w.e.f. 1st June, 2004 and to pay him usual pay and allowances and to release all other benefits attached to the said post w.e.f. that date, is justified and legal? If so, what are the relief the workman is entitled for?”

2. When this case was taken up today, none appears on behalf of either of the parties. None also appeared on previous two dates. On careful perusal of the record it is evident that inspite of being given opportunities, the union has not turned up to give evidence. From the above conduct of the union it may reasonably be presumed that the union is no longer interested to proceed with this reference further. Perhaps the dispute between the parties does not exist at present.

3. Considering the above facts and circumstances, the present reference is disposed of by passing a “No Dispute Award”.

Dated, Kolkata

the 18th March, 2014

JUSTICE DIPAK SAHA RAY, Presiding Officer

नई दिल्ली, 24 अप्रैल, 2014

का.आ. 1292.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक ऑफ बडोदा के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच

अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 30/2012) को प्रकाशित करती है जो केन्द्रीय सरकार को 25/4/2014 को प्राप्त हुआ था।

[सं. एल-12012/5/2012-आईआर (बी-II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 24th April, 2014

S.O. 1292.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 30/2012) of the Central Government Industrial Tribunal-cum-Labour Court, Nagpur as shown in the Annexure in the Industrial Dispute between the management of Bank of Baroda and their workmen, received by the Central Government on 25/4/2014.

[No. L-12012/5/2012-IR (B-II)]

RAVI KUMAR, Section Officer

ANNEXURE

**BEFORE SHRI J.P. CHAND, PRESIDING OFFICER,
CGIT-CUM-LABOUR COURT, NAGPUR**

Case No. CGIT/NGP/30/2012

Date: 07.04.2014

Party No. 1 : The Branch Manager,
Bank of Baroda, Manewada
Branch, Ashirwad Square,
Near Rode Hospital,
Hudkeshwar Road,
Nagpur. (MS).

Versus

Party No. 2 : Sh. Avinash S/o. Bajirao Nimje,
R/o. Pachpaoli, Thakkargram,
Near Hindi Primary School,
Nagpur. (MS).

AWARD

(Dated: 07th April, 2014)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of Bank of Baroda and their workman, Shri Avinash Nimje, for adjudication, as per letter No.L-12012/5/2012-IR (B-II) dated 03.12.2012, with the following schedule:-

“Whether the action of the management of Bank of Baroda through its Branch Manager, Manewada Nagpur (MS) in terminating the services of Shri Avinash S/o. Bajiraoji Nimje a daily wage

temporary workman from his duty w.e.f. 18.12.2010 is legal and justified? What relief the workman is entitled to?”

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the workman, Shri Avinash Nimje, ('the workman' in short), filed the statement of claim and the management of Bank of Baroda, ("Party No. 1" in short) filed their written statement.

The case of the workman as presented in the statement of claim is that he was in the employment of the party no.1 at Manewada branch since 25.08.2009 and he used to discharge his duty from 8.30 A.M. to 8.30 P.M. and he was initially paid Rs. 100/- per day and subsequently the wages was enhanced to Rs. 115/- to Rs. 125/- and wages was being paid to him weekly on vouchers and he was in continuous service with party no.1 for 17 months, but on 18.12.2010, all of a sudden, party no.1 brought his services to an end without following the due process of law and party no.1 did not comply with the mandatory provisions of section 25-F and 25-G of the Act and the work which he was discharging was that of perennial nature and the same is still available with party no.1 and he had already completed 240 days of continuous work before his termination, but party no.1 neither paid any wages in lieu of the notice nor any retrenchment compensation, before termination of his services and he is out of employment since the date of termination and he is not gainfully employed and he tried his level best to get employment, but in vain and he is entitled for reinstatement in service with continuity and full back wages.

3. The party no.1 in the written statement after denying the allegations made by the workman in the statement of claim has pleaded inter-alia that the reference is bad in law, in as much as the workman had never been entered into its employment and the workman has concealed material facts and has attempted to show that he was in its regular service and as the workman was never in its regular service, the reference itself is unwarranted and uncalled for and is therefore vitiated.

The further case of party no.1 is that the workman was engaged by Manewada branch only for the purpose of sweeping and cleaning the premises, purely on temporary/casual/adhoc/ need basis intermittently, during the period from 28.08.2009 to 18.12.2010 and paid wages in daily basis at the rate of Rs. 100/- to Rs. 120/- and the services of the workman were not utilized by it for the entire period between 28.08.2009 to 18.12.2010 and he was called, whenever there was a need on daily basis and he had not completed 240 days of work and as after 18.12.2010, the services of the workman were not required at Manewada Branch, the same came to an end automatically and as a matter of fact, the workman himself abandoned the services and the name of the workman was neither

sponsored by employment exchange for recruitment in its service nor he was issued with any appointment letter by the competent authority after the selection process, as required for the recruitment of its sub-staff cadre and his engagement was without any sanction from the competent authority and was purely on temporary basis and as such, provisions of the Act do not apply to his case and the question of having completed 240 days or application of the provisions of sections 25-F and 25-G does not arise and as the engagement of the workman was by the Branch Manager, who was not competent and empowered to engage him, the engagement was irregular and void ab-initio and the disengagement of casual employee working on daily wages cannot be construed to be a retrenchment under the provisions of the Act and there is no sanctioned post or clear vacancy now available with it and the workman is not entitled to any relief.

4. In support of their respective claims, both the parties have led oral evidence, besides placing reliance on documentary evidence. The workman has examined himself as a witness to prove his case, whereas, one PPL Achari Balage has been examined as a witness on behalf of the party no.1.

5. In the evidence on affidavit, the workman has reiterated the facts mentioned in the statement of claim. In his cross-examination, the workman had admitted that his engagement by the bank was on daily wages and he was engaged by the bank as and when required and wages was being paid to him for the days, he was being engaged by the bank and Exts. W-I to W-LI are the vouchers showing payment of wages to him for the total days he worked with the bank and one Sudhir Dhamgaye, who was engaged in his place by the bank was appointed as a regular peon.

6. The evidence of the witness, PPL Achari Balage examined on behalf of the party no.1, on affidavit is in the same line of the stands taken by party no.1 in the written statement. In his cross-examination, the witness for the party no.1 has admitted that the workman was engaged at Manewada branch w.e.f. 25.08.2009 and he was engaged till 18.12.2010 and the workman was being paid daily wages of Rs. 100/- to Rs. 120/- for the days he worked with the branch and the statement given in paragraph 4 of his affidavit that since the services of the workman were not required after 18.12.2010, the same came to an end automatically is correct and neither one month's notice nor one month's wages in lieu of notice nor retrenchment compensation was given to the workman prior to termination of his services.

7. At the time of argument, it was submitted by the learned advocate for the workman that the workman was in the employment of the party no.1 in Manewada Branch since 25.08.2009 and he worked continuously without break till 18.12.2010 and his services were terminated by party no.1 on 18.12.2010 and the workman had worked for

more than 240 days in the preceding 12 calendar months of the date of his termination, but party no.1 did not comply the mandatory provision of section 25-F of the Act before termination of the services of the workman and the workman was neither given one month's notice nor one month's wages in lieu of notice nor retrenchment compensation before his termination and as such, the termination of the services of the workman is illegal and therefore, the workman is entitled for reinstatement in service with continuity and full back wages.

In support of the submissions, the learned advocate for the workman placed reliance on the decisions reported in 2005-II CLR-279 (Bank of Baroda Vs. Ghemarbhari Harjibhai Rabari) and the judgment of the Hon'ble Apex Court in Civil Appeal no. 1059 of 2005 (Nihal Singh Vs. State of Punjab and others).

8. Per contra, it was submitted by the learned advocate for the party No.1 that the workman was engaged purely on casual and ad-hoc need basis for the period from 28.08.2009 to 18.12.2010, only for the purpose of sweeping and cleaning the branch premises and he did not work continuously and his engagement was not against regular or permanent post and there is a procedure for appointment in sub-staff cadre in the Bank and the workman was engaged by the Branch Manager on casual basis and the Branch Manager was not competent to engage the workman and the initial engagement of the workman itself was illegal and as such, there is no question of regularization or reinstatement of the workman in service and the workman left the job on his own accord and he also did not complete 240 days of work in the preceding 12 calendar months of the date of the alleged termination of services and as such, application of the provisions of section 25-F of the Act does not arise and the workman is not entitled to any relief.

In support of such contentions, the learned advocate for the party no.1 has placed reliance on the decisions reported in 1998 II LLJ-15 (Himanshu Kumar Vidyathi vs State of Bihar), (2003) 3 SCC-485 (DR. Chanchal Goyal Vs. State of Rajasthan), (2004) 7 SCC-112 (A.Umarani Vs. Registrar Co-operative Societies), 2006 (6) SCALE-107 (State Bank of Bikaner & Jaipur vs Om Prakash Sharma), 2006 (6) SCALE-101 (National Fertilizer Vs Somvir Singh), 2006 (4) SCALE-197 (Secretary, State of Karnataka vs. Umadevi), 1992 LAB I.C. 1813 (Chakra dhar Tripathy vs State of Orissa) and some others.

Keeping in view the principles enunciated by the Hon'ble Apex Court in the decisions, on which reliance has been placed by the learned advocates for the parties, the present cast at hand is to be considered.

9. The workman has claimed that he was in employment of party No.1 from 25.08.2009 to 18.12.2010 and his services were terminated by the party no.1 orally on 18.12.2010 and though he had completed more than

240 days of work in the preceding 12 calendar months of the date of termination, the party no.1 terminated his services without compliance of the mandatory provisions of section 25-F of the Act and as such, his termination from services is illegal. On the other hand, it is the case of the party no.1 that the workman was engaged by the Branch Manager casually for the purpose of cleaning the premises of the Bank and the manager was not competent to engage the workman and the workman did not complete 240 days of work in the calendar year preceding the alleged date of termination and the workman left the work on his own accord and as the initial engagement of the workman was illegal the workman is not entitled for any relief.

In view of the stands taken by the parties, I think it proper to mention the principles governing the application of section 25-F of the Act, as enunciated by the Hon'ble Apex Court in judgments reported in AIR 1966 SC-75 (Employees in relation to Digwadih colliery Vs. Their workmen), AIR 2002 SC-1147 (Range Forest Officer Vs. State of Karnataka) and AIR 2005 SC-2179 (Manager, Reserve Bank of India Vs. S. Mani) have enunciated the principles governing the application of section 25-F of the Act.

In the judgment reported in AIR 1966 SC-75 (Supra), the Hon'ble Apex Court have held that:-

“Industrial Disputes Act (14 of 1947), S.25F, S25B, S.2(eee) (as amended) by Industrial Disputes (Amendment) Act (1964)- Expression “Continuous service for not less than one year” in S.25- Meaning- Effect of amendment in 1964.

Though S.25F speaks of continuous service for not less than one year under the employer, if the workman has actually worked for 240 days during a period of twelve calendar months both the conditions are fulfilled. The definition of “continuous service” need not be read into section 25B. The fiction converts service of 240 days in a period of twelve calendar months into continuous service for one complete year. The amendment S.25B only consolidates the previous Ss.25B and 2(eee) in one place, adding some other matters. The purport of the new provisions, however, is not different. In fact the amendment of S.25F of the Principal Act by substituting in Cl.(b) the words “for every completed year of continuous service in place of the words “for every completed year of service” has removed a discordance between the un-amended S.25B and the un-amended cl.(b) of S.25F. No uninterrupted service is necessary if the total service is 240 days in a period of twelve calendar months either before these several changes or after these. The only change in the Act is that this service must be during a period of twelve calendar months preceding the date with reference to which calculation is to be

made. The last amendment has now removed a vagueness which existed in the un-amended S.25B.”

In the judgment reported in AIR 2002 SC-1147 (Supra), the Hon'ble Apex Court have held that:-

“Industrial Disputes Act (14 of 1947), Ss.25-F, 10-Retrenchment compensation –Termination of services without payment of – Dispute referred to Tribunal- case of workman/claimant that he had worked for 240 days in a year preceding his termination – Claim denied by Management- Onus lies upon claimant to show that he had in fact worked for 240 days in a year. In absence of proof of receipt of salary or wages or record of appointment, filing of an affidavit by workman is not sufficient evidence to prove that he had worked for 240 days in a year preceding his termination.

In the instant case, dispute was referred to the Tribunal that the claimant/workman had worked for 240 days and his service had been terminated without paying him any retrenchment compensation. It was the case of the claimant/workman that he had so worked but this claim was denied by the management. It was then for the claimant to lead evidence to show that he had in fact worked for 240 days in the year preceding his termination. Filing of an affidavit is only his own statement in his favour and that cannot be regarded as sufficient evidence for any court or Tribunal to come to the conclusion that a workman had, in fact, worked for 240 days in a year. No proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for this period was produced by the workman. Burden cannot be placed on management to show that there was justification in termination of service without first determining on basic of cogent evidence that workman/claimant had worked for more than 240 days in a year preceding his termination.”

In the judgment reported in AIR 2005 –SC-2179 (Supra) the Hon'ble Apex Court have held that :-

“Industrial Disputes Act, 1947 – Ss. 25-F, 25-N, 25-B and 11 – 240 days’ continuous service- Onus and burden of proof with respect to – Evidence sufficient to discharge –Failure of employer to prove a defence (of abandonment of service) if sufficient or amounted to an admission, discharging the said burden- Held, initial burden of proof in on workmen to show that they had completed 240 days of service- Onus of proof does not shift to employer nor is the burden of proof on the workman discharged, merely because employer fails to prove a defence or an alternative plea of abandonment of service- Filing of affidavit of workman to the effect that he had worked for 240 days continuously or that the workman had made

repeated representations or raised demands for reinstatement, is not sufficient evidence that can discharge the said burden- Other substantive evidence needs to be adduced to prove 240 days' continuous service. Instances of such evidence given. The initial burden of proof was on the workmen to show that they had completed 240 days of service. The Tribunal did not consider the question from the angle. It held that the burden of proof was upon the appellant on the premise that they have failed to prove their plea of abandonment of service. Filing of an affidavit is only his own statement in his favour and that cannot be regarded as sufficient evidence for any court or tribunal to come to the conclusion that a workman had, in fact, worked for 240 days in a year. Such evidence might include proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for this period or the terms and conditions of his offer of appointment, or by examination of any other witness in support of his case."

So, it is clear from the principles enunciated by the Hon'ble Apex Court that for getting the protection of the provisions of Section 25-F of the Act, the workman has to prove that he worked for 240 days during a period of twelve calendar months preceding the date with reference to which calculation is to be made.

10. The party No.1 has failed to adduce any evidence to show that the workman left the services on his own accord.

11. In order to prove that he had worked for more than 240 days in the preceding 12 calendar months of the date of termination, the workman has produced the documents, Exts. W-I to W-LI, which are Xerox copies of the vouchers under which wages was paid to him by the Party No.1 for the days of his engagement in the branch in question. It is to be mentioned here that the said documents have been admitted into evidence without formal proof on admission by Party No.1. On perusal of the said documents and on calculation made on the basis of the said documents, it is found that the workman had in fact worked for more than 240 days in the preceding 12 calendar months of the date of his termination, i.e. 18.12.2010.

It is the admitted case of Party No.1 that at the time of termination of the services of the workman, neither one month's notice nor one month's wages in lieu of notice nor retrenchment compensation was given to the workman. So, the termination of the workman from services without compliance of the mandatory provisions of Section 25-F amounts to retrenchment and is illegal.

12. Now, the question remains for consideration is as to what relief or reliefs the workman is entitled.

At this juncture, I think it proper to mention about the recent decision of the Hon'ble Apex Court as reported in (2013) 5 SCC-136 (Asstt. Engineer, Rajasthan Development Corporation Vs. Gitam Singh). In the said decision, the Hon'ble Apex Court after taking into consideration a large number of decisions delivered by the Hon'ble Apex Court earlier, including the decisions reported in 2011 II CLR-461 (Devinder Singh Vs. Municipal Council, Sonaur, (2010) 3 SCC-192 (Harjinder Singh Vs. Punjab State Warehousing Corporation) and (2010) 9 SCC-126 (Incharge Officer Vs. Shankar Setty) have been pleased to hold that:-

"In our view, Harjinder Singh and Devinder Singh do not lay down the proposition that in all cases of wrongful termination, reinstatement must follow. This court found in those cases that judicial discretion exercised by the labour court was disturbed by the High Court on wrong assumption that the initial employment of the employee was illegal. As noted above, with regard to the wrongful termination of a daily wager, who had worked for a short period, this court in long line of cases has held that the award of reinstatement cannot be said to be proper relief and rather award of compensation in such cases would be in consonance with the demand of justice. Before exercising its judicial discretion, the labour court has to keep in view all relevant factors, including the mode and manner of appointment, nature of appointment, length of service, the ground on which the dispute before grant of relief in an industrial dispute.

In the light of the principles enunciated by the Hon'ble Apex Court as mentioned above, now, the present case in hand is to be considered.

In this case, it is admitted that the workman was engaged as a daily wager on 25.08.2009 and he worked till 18.12.2010. In a case such as the present one, it appears that the relief of reinstatement cannot be justified and instead monetary compensation would meet the ends of justice. Taking into consideration the facts and circumstance of the case, in my considered opinion, the compensation of Rs. 20,000 (Rupees twenty thousand only) in lieu of reinstatement shall be appropriate, just and equitable. Hence, it is ordered:-

ORDER

The action of the management of Bank of Baroda through its Branch Manager, Manewada Nagpur (MS) in terminating the services of Shri Avinash S/o. Bajiraoji Nimje a daily wage temporary workman from his duty w.e.f. 18.12.2010 is illegal and unjustified. The workman is entitled for monetary compensation of Rs.20,000 (Rupees twenty thousand only) in lieu of reinstatement. He is not entitled for any other relief.

The party no.1 is directed to carry out the award within one month of the date of publication of the award in the official gazette.

J. P. CHAND, Presiding Officer

नई दिल्ली, 24 अप्रैल, 2014

का.आ. 1293.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पंजाब नैशनल बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय सं. 1, नई दिल्ली के पंचाट (संदर्भ संख्या 34/2010) को प्रकाशित करती है जो केन्द्रीय सरकार को 25/4/2014 को प्राप्त हुआ था।

[सं. एल-12011/19/2010-आईआर (बी-II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 24th April, 2014

S.O. 1293.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 34/2010) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, New Delhi as shown in the Annexure in the Industrial Dispute between the management of Punjab National Bank and their workmen, received by the Central Government on 25/4/2014.

[No. L-12011/19/2010-IR (B-II)]

RAVI KUMAR, Section Officer

ANNEXURE

**BEFORE DR. R. K. YADAV, PRESIDING OFFICER,
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL
NO. 1, KARKARDOOMA COURTS COMPLEX,
DELHI**

I.D. No. 34/2010

Shri Kamal Pathak
C/o M. P. Mavi, 321,
Lawyers Chambers,
Delhi High Court
New Delhi-110003

...Workman

Versus

1. The Chairman and Managing Director,
P.N.B., Head Office,
Bhikaji Cama Place,
New Delhi.
 2. The Chief Manager,
Punjab National Bank,
Maharani Bank, New Delhi
- ...Management

AWARD

A saving bank account in the name of Ms. Sangeeta, under guardianship of her father, namely, Shri Prem Chand, was being operated at Maharani Bagh branch of Punjab

National Bank (in short the bank). There was a stipulation to the effect that maturity amount of the account shall be released in favour of the account holder, on her attaining age of maturity. The account, referred above, was not operated for a few years, hence it became dormant.

2. In January 2006, Shri Prem Chand, on enquiry about the status of the said account, came to know that on the basis of a forged application, the account was closed and maturity amount was misappropriated. He moved an application to the bank, detailing therein that the said account was handled by Shri Kamal Pathak, who was working as Computer Terminal Operator in the bank. It led the bank to come out of its slumber. At that time, a few complaints from customers were also received by the bank, wherein allegations were levelled that their accounts were interfered with by unauthorized persons and money were withdrawn from their accounts too. Shri R.C. Rohit, Senior Concurrent Auditor was asked to investigate the matter. He took up the job and submitted his report dated 04.02.2006, wherein he raised an accusing finger at Shri Kamal Pathak, the claimant.

3. A case was lodged against the claimant with local police. Since he was not put on trial within a period of one year from the date of lodging of FIR, the bank thought it expedient to proceed against him with departmental action. Charge sheet dated 20.02.2008 was served on the claimant, wherein it was alleged that he committed and/or facilitated fraud in 51 accounts, which were either dormant or illiterate accounts. Contents of the charge sheet, served on the claimant, are extracted thus:

“ It is alleged against you as under:-

That while working as CTO at BO: Maharani Bagh, New Delhi, you have committed following lapses:-

i. You committed fraud of Rs.101686 by forging signatures of the depositors on withdrawal slips/cheques and passing the same for payments:-

S. No.	Name	A/c No.	Date	Amount (Rs.)
1	2	3	4	5
1.	L.D. Chawla	6256	14.07.05	7000.00
2.	-do-		15.07.05	3000.00
3.	Manorama Vashist	5602	27.07.05	5850.00
4.	Mohan Singh	5658	04.04.05	7000.00
5.	Jagmohan Singh	119278	28.09.05	7000.00
6.	-do-		01.10.05	2000.00

1	2	3	4	5	1	2	3	4	5
7.	Yogesh Arora	120392	01.09.05	7000.00	11.	Som Pal		15.09.05	4490.00
8.	-do-		12.01.06	3050.00	12.	Manisha Malhotra	1181748	16.09.05	55000.00
9.	Asaid Siddiqui	119620	24.08.05	7000.00	13.	Rekha Chakraborty	80211	18.08.05	7000.00
10.	Anuraksha	12346	03.11.05	7000.00	14.	Shakeel Ahmed	90978	18.08.05	7000.00
11.	-do-		05.1.05	4400.00	15.	KS Kumar and T. Ravindran	1172449	01.12.05	6000.00
12.	-do-		07.11.05	5000.00	16.	-do-		05.12.05	10000.00
13.	Sushil Bhalla	6069	28.03.05	6000.00	17.	Akhilesh Kumar	1185948	23.09.05	5000.00
14.	D.R. Sharma	5534	23.08.04	2000.00	18.	-do-		26.09.05	20000.00
15.	-do		30.11.04	1200.00	19.	-do-		27.09.05	10000.00
16.	-do-		11.02.05	5500.00	20.	Veraharan u/g Renuka Khanna	119169	03.10.05	85000.00
17.	Vinod Bala	117404	15.10.05	5000.00	21.	Roshni, U/g Renuka Khanna	119170	03.10.05	9000.00
18.	-do-		17.10.05	5000.00	22.	Govinda (III Account)	11020	07.04.05	3000.00
19.	Anis Ahmad	120985	16.01.06	6486.00	23.	-do-		21.04.05	1000.00
20.	Krishna Bhambi	5465	24.05.05	700.00	24.	-do-		25.04.05	1000.00
21.	Prabhat Miyogi	6050	28.03.05	5000.00	25.	-do-		26.04.05	6000.00
ii. You facilitated following payments by posting withdrawal slips/cheques after forging signatures of the account holders. You misused your official position by facilitating passing of these instruments. Thus committed the fraud of Rs.1896484.30.					26.	-do-		27.04.05	3000.00
S.	Name	A/c No.	Date	Amount (Rs.)	27.	-do-		18.10.05	346.00
1	2	3	4	5	28.	D.R.Sharma	5534	18.08.04	60000.00
1.	Richa Srivastav & Shakti Bala	119636	22.09.05	28000.00	29.	Rashid Minhaj	119311	16.11.05	85000.00
2.	Sweta and Harpal Singh	5985	04.04.05	20000.00	30.	Hariniwas Rai	8956	22.11.05	69000.00
3.	Krishna Bhambi	5465	18.05.05	17000.00	31.	Draupadi	6269	06.05.05	40000.00
4.	Som Sharma	7359	12.08.05	125000.00*	32.	Kalawati (III Account)	9866	08.10.04	3000.00
5.	-do-		13.08.05	70000.00*	33.	-do-		08.10.04	3700.00
6.	-do-		16.08.05	369.30	34.	Anis Ahmad	120985	14.01.06	200000.00
7.	-do-		17.08.05	2279.00	35.	-do-		14.01.06	160000.00
8.	Som Pal	1176889	14.09.05	100000.00	36.	Vikas Daya	1176710	10.09.05	7000.00
9.	-do-		14.09.05	100000.00	37.	-do-		12.09.05	10000.00
10.	-do		14.09.05	65000.00	38.	-do-		12.09.05	5000.00
					39.	-do-		12.09.05	7000.00

1	2	3	4	5
40.	Sanjay Gupta	1177675	13.09.05	7000.00
41.	-do-		14.09.05	4500.00
42.	Nishat Ashraf	1178869	15.09.05	20000.00
43.	Deepti Gupta	1181252	15.09.05	25000.00
44.	-do-		17.09.05	4000.00
45.	Nathmal Bedi	1182978	14.10.05	23000.00
46.	Shaifali Sharma	185896	20.9.05	7000.00
47.	-do-		20.9.05	7000.00
48.	-do-		20.9.05	7000.00
49.	-do-		20.9.05	7000.00
50.	Nidhi Arora & Ramesh Arora	131438	27.08.05	20000.00
51.	Deepa	137858	30.08.05	7000.00
52.	-do-		30.08.05	7000.00
53.	-do-		31.08.05	40000.00
54.	Kawal Suri	139607	17.11.05	16000.00
55.	Pranav Gulati, U/g Archana	145556	19.11.05	20000.00
56.	Ashu Gupta	5395	01.08.05	100000.00
57.	-do-		01.08.05	38800.00
58.	Mukesh Rekha Gupta	11406	10.03.05	22000.00
59.	Vinod Bala	117404	12.10.05	24000.00
60.	Baldev Raj	12327	29.08.05	80000.00

* You verified forged signatures of the depositors, however payments were posted and passed by other officials.

iii. You closed following accounts without any mandate/authorization from the depositors/account holders by forging signatures of the depositors on withdrawal slips/cheques and misused your official position by facilitating passing of these instruments. Thus committed fraud of Rs.214488.00.

S. No.	Name	A/c No.	Date	Amount (Rs.)
1	2	3	4	5
1.	Sangeeta U/G Prem Chand	8456	25.05.05	39979.70
2.	Som Sharma	7359	17.08.05	2279.00

1	2	3	4	5
3.	Namrata Karir	1265	05.05.05	52579.49
4.	Janak Dua	4942	27.07.05	92621.65
5.	Rekha Jain	7485	28.03.05	25370.59
6.	Ashu Gupta	5395	08.08.05	1657.57

iv. A Saving Fund Account No.5231 was being maintained by the branch in names of Smt. Sumitra Devi, Pratap Singh and Ravinder Singh with the mandate of former or survivor jointly.

You committed following irregularities in this account.

(i) You forged signatures of Shri Pratap Singh on withdrawal slips, passed the same for payment amounting to Rs.18,500.00 whereas Shri Pratap Singh was not authorized to operate the account till the former was alive.

S.No.	Date	Amount (Rs.)
1.	12.07.2005	6500.00
2.	13.07.2005	7000.00
3.	13.07.2005	5000.00

(ii) You forged signatures of Shri Pratap Singh on withdrawal slips, posted withdrawal slips whereas he was not authorized to operate the account till the former was alive, facilitated passing of these instruments from other officials of the branch. Thus committed the fraud of Rs.57000 :—

S.No.	Date	Amount(Rs.)
1.	15.07.2005	35000.00
2.	16.07.2005	22000.00

(iii) On 16.07.2005 you posted a fraudulent withdrawal of Rs.7000.00 in the SF account No.5231 of Smt. Sumitra Devi, Pratap Singh and Ravinder Singh and reversed the said entry on the same day. You also made the necessary correction in the day book, thus tampered bank record.

v. On 12.01.2006 you unauthorizedly modified/activated entry for Rs.2,54,547.29 which was in inactive category and was lying in CA No.22874 and debited the entry in Local Clearing Imprest Account on 13.01.2006.

vi. On 16.1.2006 you posted a debit transfer voucher for Rs.3,84,395.29 in SF Account No.52892 of Shri Rajeev Kumar without obtaining any debit authority from the account holder and credited the amount to SF A/c No.150947 of Shri Rajeev Kumar Bhaskar and on subsequent dates posted following cheques in SF a/c (No.150947 of Rajeev Kumar Bhaskar), whereas these cheques were actually issued from SF A/c No.11233 of Suresh Mittal. You misused your official position by facilitating passing of these instruments from other officials of the branch and thus committed a fraud of Rs.320000.

Date of transaction	Cheque No.	Amount
17.01.06	134785	20000.00
17.01.06	134786	20000.00
17.01.06	134787	40000.00
17.01.06	134788	40000.00
18.01.06	134792	20000.00
18.01.06	134791	20000.00
18.01.06	134789	80000.00
18.01.06	134790	70000.00
18.01.06	134793	10000.00

The above acts on your part constitute gross misconduct under the provisions of Clause 5(j) of the Bipartite Settlement dated 10.4.2002 which reads as under:-

“Doing any act prejudicial to the interest of the bank involving the bank in serious loss.”

3. Reply to the charge-sheet, submitted by Shri Pathak, was found not to be satisfactory. Vide order dated 29.3.08, Shri Gopal Aggarwal, Senior Manager, Zonal Office, Delhi, was appointed as Enquiry Officer. Enquiry started on 28.04.08 and concluded on 30.12.08. The Enquiry Officer submitted his report to the Disciplinary Authority on 11.02.2009. The Disciplinary Authority concurred with the findings of the Enquiry Officer and awarded punishment of dismissal without notice, vide order dated 12.05.09. Shri Pathak preferred an appeal dated 12.06.09, which came to be dismissed vide order dated 30.07.2009.

4. Feeling aggrieved by the findings recorded by the Enquiry Officer, concurrence given to those findings by the Disciplinary Authority, dismissal order dated 12.05.09 and order of the Appellate Authority, Shri Pathak raised an industrial dispute before the Conciliation Officer. The bank contested his claim and projected that his dismissal order was passed, after awarding him reasonable

opportunities to defend in the domestic enquiry. Since conciliation proceedings failed, the appropriate Government referred the dispute to this Tribunal for adjudication vide order No.L-12011/19/2010-IR(B-II), New Delhi, dated 16.07.2010, with following terms:-

“Whether the action of the bank in dismissing without notice Kamal Pathak, ex computer operator w.e.f. 12.05.09 is just, legal and justified ? If not to what relief the workman is entitled?”

5. Claim statement was filed by Shri Pathak, pleading therein that he was posted as computer operator category “B” at Maharani Bagh branch of the bank vide order dated 19.12.05. On 01.02.06 he was transferred to Greater Kailash Part-I branch of the bank. On 03.02.2006 he was placed under suspension on grounds of fraud of Rs.39979 in S.F. Account No.8457 of Ms. Sangeeta, under guardianship of Shri Prem Chand, operated at Maharani Bagh branch of the bank. He unfolds that charge sheet dated 20.2.2008 was served upon him, which shows that 51 accounts were affected by fraud and 101 instruments were subject matter of the enquiry. He asserts that dormant accounts can be operated only by manager or an authorized officer. He was neither the manager nor authorized in that behalf. For operation of an account of illiterate person, incharge himself is responsible for verifying thumb impression of the account holder and after comparison of his photographs, payment is made only when incharge is satisfied as to the identity of the account holder. He had no role to play in operation of an account of an illiterate person. He agitates that these factors make it clear that no liability could be fastened on him in respect of fraud at Serial No.26 of charge No.2. It has been alleged that he passed cheque of Rs.60000 by forging signatures of the account holder. He explains that on the day when the said cheque was passed, he was on training at Faridabad. In the same manner, at Serial No.60 of charge No.2, it is alleged that he made entry of the instrument in the system, while the entry was made by Shri C.P. Chhabra. Likewise Serial No.46 and 47 of charge No.2, withdrawal slips were filled in by Nathu Ram at “May I Help You Counter”, while it has been alleged that he filled in withdrawal slips, forged signatures and withdrawn amount out of those accounts. Charges at Serial No.22, 23, 24,25,26,27,31,32 and 33 of charge No.2 relate to accounts of illiterate persons, which were handled directly by the manager and not by him. He projects that in respect of charge No.3 allegations were levelled that he closed that account in an unauthorized manner, while request of the account holder in that regard is available on the record. Likewise Serial No. 1 and 3 of charge No.4 has not been proved. Those facts highlight that the bank acted against him with malafide intention, which fact vitiates the enquiry.

6. He went to build his case that Enquiry Officer had not allowed him to adduce/summon documents from

the record of the bank, to prove his innocence. The Presenting Officer examined only three witnesses, namely, Ajay Sharma, Shri S.K. Sehgal and Shri Ashok Kashyap, the hand writing expert. None of the account holders was examined. He examined Shri Nathu Ram, Shri C.P. Chhabra and himself in his defence.

7. Shri Pathak projects that conclusions arrived at by the Enquiry Officer were beyond his brief. He comments that as per the Enquiry Officer, charge No.5 was not proved and charge No.1 and 2 were proved to the extent that body writing of the instruments were in his hand and he posted instruments in the system for payment. However, Enquiry officer has concluded that it is not proved that he has forged signatures on those instruments as alleged in the charge sheet. In respect of charge No.37, the Enquiry Officer concludes that it is proved to the extent that body writings of the instrument are in his hand. He closed/debited the account without authority of the depositor. However, the Enquiry Officer concludes in respect of Serial No.2, 4, 5 and 6 that those were not proved. It has been concluded by the Enquiry Officer that it has not been proved that he has forged signatures on the instrument, which was subject matter of charge No.3. Conclusion of the Enquiry Officer in respect of charge No.4 is self-contradictory. The Enquiry Office announces that charge No.6 stood proved.

8. With a view to castigate report of the Enquiry Officer, he asserts that only 5 complaints were supplied to him but none of the complainant was examined. When there were 101 instruments, which were subject matter of fraud, various persons were involved in passing of those instruments, carrying forged signatures. According to him it was a collective failure of authorities, system and supervision by the bank authorities. In such a situation how he can be made a scapegoat by awarding punishment of dismissal. Shri Nathu Ram testified before the Enquiry Officer that body writing of documents, mentioned at Serial No.46 and 47 of charge No.2, were in his hands. On the other hand, handwriting expert opines that these documents were in the hand writing of the claimant, which fact speaks volumes about veracity and authenticity of the report of Shri Kashyap. The Enquiry Officer went beyond his brief when he recorded findings against him to the effect that body writing of the documents were in his hand, while no such charges were framed against him. The Enquiry Officer failed to take into account that instruments, mentioned at Serial No.4, 5, 28 and 60 of charge No.2, were entered in the system by Shri C.P. Chhabra. He projects that making entry of the instruments in computer system was part of his duty, which he performed to best of his ability and under supervision of his superiors. In respect of charge No.2, only 23 instruments were within his power, while 33 instruments were passed by the officer incharge. He only entered those instruments in the system and issued token to the customers and handed over

instruments to the incharge for onward action, in that situation how he can be held accountable, agitates Shri Pathak. He highlights that conclusions arrived at by the Enquiry Officer in respect of serial No.2, 4, 5 and 6 of charge No.3 as well as serial No.1 of charge No.3 are wrong. According to him count 1st and 3rd of charge No.4 were not proved, while the Enquiry Officer concluded that it were proved on the basis of body writing of the instruments, alleged to be in his hand. He was not at all charge sheeted that body of writing of those instruments were in his hand. It was not open to the Enquiry Officer to frame a new charge against him, which fact justify that the enquiry report is not proper. He asserts that as far as charge No.6 is concerned, he has been punished for the payments made, which were not in his power to disburse. The Disciplinary Authority was under an obligation to take into account the irregularities in the report of the Enquiry Officer, which are detailed above. In some cases withdrawals were made on the basis of cheques, which were issued by the bank to the account holder(s). There was no intimation as to whether those cheques were misplaced or lost. It has not been explained as to how those instruments reached his hand and how he could use those instruments for his benefit. In the last he claims that witnesses produced were inimical qua him, who settled their scores. He claimed that in view of the facts detailed above enquiry report dated 12.2.2009, order passed by the Disciplinary Authority on 12.5.09 and that of the Appellate Authority which is dated 30.7.09, may be set aside and he may be reinstated in service with continuity and full back wages.

9. Claim was demurred by the bank pleading that Shri Kamal Pathak, while working as computer terminal operator at Maharani Bagh branch, committed fraud of Rs.26.70 lacs in various dormant accounts. A criminal case was lodged against him. Since he was not put to trial within one year from the date of lodging the case, it was thought expedient to initiate domestic action as per provisions of Bipartite Settlement. He was served with a charge sheet dated 20.02.08, wherein details of gross misconduct committed by him were enlisted. Acts of misconduct constituted gross misconduct under the provisions of clause 5(j) of Bipartite Settlement dated 10.04.2002. Reply to the charge sheet submitted by Shri Pathak, was not found satisfactory, hence domestic enquiry was instituted vide order dated 29.03.2008. Shri Gopal Aggarwal was appointed as Enquiry Officer. The Enquiry started on 20.4.2008. The claimant participated in the departmental enquiry, to whom due opportunities to cross examine the witnesses and produce evidence in his defence were accorded. Copies of day to day proceedings were supplied to him. Enquiry proceedings were held in just and fair manner, adhering to principles of natural justice. The enquiry proceedings came to an end on 30.12.08. The Enquiry Officer submitted his report dated 11.2.2009, copy of which was forwarded to Shri Pathak for his submissions.

Shri Pathak made his submissions on 23.3.2009. On consideration of enquiry report and submissions of the claimant, the Disciplinary Authority concurred with the findings, so recorded. Show cause notice dated 25.4.09 was served, proposing punishment of dismissal without notice. Personal hearing was given to the claimant on 01.07.09, who appeared before the Disciplinary Authority alongwith his defence representative. He made oral as well as written submissions before the Disciplinary Authority. Vide order dated 12.05.09 punishment of dismissal without notice was awarded to Shri Pathak. Appeal preferred by him was dismissed by the Appellate Authority, vide order dated 30.07.09. It has been projected that the enquiry conducted against Shri Pathak was in consonance with principles of natural justice.

10. The bank does not dispute that Shri Pathak was transferred to Greater Kailash Part I branch on 01.02.2006. His suspension on 03.02.2006 is also not a matter of dispute. It has been projected that designation as "Computer Terminal Operator-Category B" is a simple change in designation from a lower allowance carrying post to a higher allowance carrying post. Factum relating to 51 accounts being affected by fraud and 101 instruments being subject matter of that fraud are not disputed. It has been projected that Shri Marcus Tigga, Ajay Sharma, S.K. Sehgal, R.S. Pangtey, S.K. Gupta, Nathu Ram and Ms. Rita Verma were proceeded departmentally and awarded punishment according to the misconduct committed by them. Operation of a dormant account with the permission of in charge of the branch or any authorised officer of the branch is a procedural step. It has been pleaded that since Maharani Bagh branch of the bank was in process of switching over from manual banking to computerized banking, entire records of the branch were being uploaded on computers and not easily available in the branch. Officers/employees had little knowledge in computer working, while claimant was well conversant, hence all employees used to consult him or take his help, pleads the bank. Claimant took advantage of that situation, forged signatures of customers, and passed cheques/withdrawal slips for payment within his power and pocketed the money. Certain instructions, which were beyond his powers, were posted/debited by him in the system and he facilitated passing of those instruments from other officials or himself passed those instrument for payment by using I.D. of other officials of the branch. Facts relating to making out of different charge, by the Enquiry Officer than levelled against him in the charge sheet, are disputed. It has been projected that the Enquiry Officer reached findings on the basis of material available with him. His assertion that there was a collective failure of the system is uncalled for. It has been projected that the report of the Enquiry Officer was based on evidence, against which an opportunity was given to the claimant to make submissions. The Disciplinary Authority had served a notice on proposed

punishment and on hearing the claimant rightly awarded punishment of dismissal to him. The Appellate Authority was also within its power, when he dismissed his appeal. There is no substance in the allegation raised by the claimant. His claim may be dismissed, pleads the bank.

11. On pleadings of the parties, following issues were settled:

1. Whether enquiry conducted by the bank against the claimant was just fair and proper ?
2. Whether punishment awarded to the claimant commensurate to his misconduct?
3. As in terms of reference.
4. Relief.

12. Issue No.1 was treated as preliminary issue. Shri V. K. Handu and Shri Ashok Kumar Sharma were examined by the bank to discharge onus resting on it. Claimant entered the witness box to rebut the evidence adduced against him. On hearing the parties, consideration of evidence adduced in the matter and appreciation of submissions and evidence, preliminary issue was answered in favour of the claimant and against the bank, vide order dated 07.02.2011.

13. In order to prove misconduct, the bank examined S/Shri Ajay Sharma, R.S. Pangtey, Marcus Tigga, S.C. Sawalia, R.C. Rohit, Neeraj Mishra, Trilok Pal and Prem Chand. Claimant entered the witness box again to rebut facts adduced by the bank.

14. Arguments were heard at the bar. Shri Rajat Arora, authorized representative, advanced arguments on behalf of the bank to establish charges against the claimant. Shri K.P. Mavi, authorized representative, raised submissions on behalf of the claimant. Written submissions were also filed by the parties. I have given my careful considerations to the arguments advanced at the bar and cautiously perused the record. My findings on issues involved in the controversy are as follows:

Issue No. 2

15. At the outset facts deposed by Shri S.C. Sanwalia are to be noted wherein he unfolds that customers made complaints, alleging therein that money were withdrawn from their accounts without any authorization. Complaints made by the customers are Ex.MW2/131 to Ex.MW2/136. On perusal of Ex.MW2/131, it came to light that Ms. Som Sharma made a complaint to the bank that she had not operated her account No.7359 from last five years. When she approached the bank for getting entries recorded in her passbook, she came to know that not even a single penny was lying in her account. According to her, a sum

of Rs.2 lakh approximately was withdrawn from her account. Out of facts unfolded in the complaint, it came to light that fraud was committed in the account of Ms.Som Sharma and in that regard, she made a complaint to the bank.

16. Complaint Ex.MW2/132 pertains to account No.11020 being maintained by one Shri Govinda. It has been detailed therein by the complainant that on 01.02.2003, he deposited a cheque for Rs.21735.00 in the said account. Thereafter, he withdrew a sum of Rs.10000.00 as per his requirement. A sum of Rs.11,000.73 remained balance in his aforesaid account. When he came to withdraw money out of his account after sometime, he came to know that there was not even a single penny in his account. Out of complaint made by Shri Govinda, it stood highlighted that fraud took place in his account.

17. Ex.MW2/133 is a complaint made by Shri Nand Kishore. It has been detailed in the complaint that his father, Shri Baldev Raj was maintaining account No.12327 in the bank. His father expired on 02.03.1999. There was a balance of Rs.63000.00 in the account at the time of death of his father. On 07.11.2005, he was told by the bank official that a sum of Rs.80000.00 was withdrawn by his father on 29.08.2005. The bank was aware of death of his father, which occurred in March, 1999. The bank officials have been extremely negligent when amount was withdrawn out of the account in August, 2005. He requested the bank that a sum of Rs.80000.00 be transferred in account No.12327, otherwise he would be constrained to file a complaint with the police in that regard. Out of complaint Ex.MW2/133 it came to light that fraud took place in account No.12327.

18. Shri Pratap Singh made a complaint that fraudulent withdrawal took place from saving bank account No.5231 being maintained jointly in the names of Ms.Sumitra Devi, Shri Pratap Singh and Shri Ravinder Singh. He detailed that sum of Rs.6500.00, Rs.7000.00, Rs.5000.00, Rs.7500.00, Rs.7000.00, Rs.7000.00 and Rs.22000.00 were withdrawn from the said account on 12.07.2005, 13.07.2005, 13.07.2005, 15.07.2005, 16.07.2005, 16.07.2005 and 16.07.2005 respectively on the strength of fraudulent signatures. The said account could have been operated only by Ms.Sumitra Devi by affixing her thumb impression on withdrawal slips. He requested that an enquiry be made and money be credited to their account at the earliest. Out of complaint, referred above, it was brought to light that fraud took place in the joint account being maintained by Ms.Sumitra Devi, Shri Pratap Singh and Shri Ravinder Singh.

19. Investigation was initiated on the aforesaid complaints, unfolds Shri Sanwalria. During the course of investigation, Shri Prem Chand, one of the complainants informed the bank authorities that Shri Kamal Pathak paid

a sum of Rs.20,000.00 to him, with a request that he should not pursue his complaint Ex.MW2/134. The bank made a complaint to the police, copy of which is Ex.MW6/1. When testimony of this witness was purified by an ordeal of cross-examination, no efforts were made to dislodge facts testified by him. On the other hand it was conceded that fraud took place in 44 accounts, details of which were mentioned in Ex.MW6/W1.

20. Shri R.C. Rohit conducted investigation of fraud which took place in Maharani Bagh branch of the bank. He completed his investigation and submitted his report Ex.MW7/1 to the bank. He details that necessary correction in the day book was made by Shri Pathak, which opinion was expressed by him since those facts were entered in the system through password of Shri Pathak. Facts unfolded by Shri Rohit in his ocular testimony as well as in report Ex.MW7/1 were not dispelled by the claimant. Ex.MW7/1 highlights that fraud took place in a joint account being maintained by Ms.Sumitra, Shri Pratap Singh & Shri Ravinder Singh, in the account of Sangeeta, being maintained under guardianship of her father Shri Prem Chand, Ms.Richa Srivastava, Shakti Bala, Ms.Sweta & Shri Harpal Singh and Shri Baldev Raj. Facts unfolded by Shri Rohit in his report Ex.MW7/1 give support to the complaints made by the customers.

21. To ascertain as to whether the bank has been able to prove misconduct against the claimant, facts unfolded by Shri Prem Chand and Shri Trilokpal are to be scanned. Shri Prem Chand unfolds that his daughter, namely Ms.Sangeeta was having an account at Maharani Bagh branch of the bank, under his guardianship. Money was withdrawn out of that account by someone. Fraud amounting to Rs.39979.70 was committed in the account of his daughter. He wrote a letter to the bank and made a complaint in that regard, copy of which complaint is Ex.MW2/135. These facts remained unassailed when testimony of Shri Prem Chand was purified by an ordeal of cross-examination on behalf of the claimant. No eyebrows were raised on the facts that Ms.Sangeeta was having an account with Maharani Bagh branch of the bank, under guardianship of her father. No efforts were made to assail facts to the effect that a sum of Rs.39979.70 was withdrawn out of that account by someone by playing a fraud. Factum of complaint being lodged by Shri Prem Chand remained undisputed. No issue was raised on contents of the complaint, copy of which has been proved as Ex.MW2/135.

22. Facts, which emerged out of the complaint, are detailed thus:

“I had come with my younger brother on 24.01.2006 to enquire status of our complaint dated 21.01.2006, wherein it was mentioned that account No. 8456 in the name of Ms. Sangeeta, under guardianship of

Shri Prem Chand was closed by forging signatures of Shri Prem Chand. It was informed that the case has been sent to Head Office and it may take some time.

However, an employee of your bank, sporting a beard, whose name is Shri Pathak, approached us and said that there is no necessity to make complaints to the higher authorities. He said that case of yours can be solved here itself. He also said that interview of the officer, who had verified the signatures, is scheduled for next week and it would mar his chances of promotion. He further asked me (Shri Trilokpal) to approach him on 30.01.2006 and not to tag his brother along.

I, (Trilokpal) reached the bank on 30.01.2006 and found Shri Pathak busy on his seat. On seeing me, he immediately left his work and told me that my problem would be cent percent solved there and then. He took out 20 notes of Rs.1000 denomination and handed it over to me asking me to hand it over to Shri Prem Chand. He also said the amount may be reimbursed to him when his case is solved by the bank.”

23. As reproduced above, Shri Prem Chand made a complaint to the bank authorities that a fraud was committed in the account of his daughter. These facts get reaffirmation out of his complaint Ex. MW2/135. Even otherwise, Shri Trilokpal gives strength to facts unfolded by Shri Prem Chand. Shri Trilokpal testified that an account was being maintained in the name of Ms. Sangeeta, under guardianship of Shri Prem Chand, her father. On 25.05.2005, Rs.39979.70 were withdrawn out of the said account by making fake signatures of the account holder. His brother told him about that fraud. He went to the bank and made a complaint, copy of which is Ex. MW2/134. For sake of convenience, facts detailed in the said complaint are reproduced hereunder:

“I opened a minor account in the name of my daughter, Ms. Sangeeta under my guardianship. The account number is 8546. Since my daughter’s marriage was solemnized, I approached the bank for updating of the pass book. I came to know that the said amount has been withdrawn and the account closed through fake signatures. My daughter was 20 years old on 25.05.2005. Her date of birth was mentioned on the account opening form.

It is therefore requested that the matter may be investigated and I shall be highly obliged if my money is returned.”

24. Facts unfolded by Shri Trilokpal, relating to contents of complaint Ex. MW2/134, were not dispelled when he was grilled by way of cross examination. Claimant

could not highlight that complaint Ex. MW2/134 was motivated or made by Shri Trilokpal to settle his score. It is not the case of the claimant that Shri Trilokpal and Shri Prem Chand were bearing hostility hence motivated to testify facts against him. No efforts were made to bring it over the record that Shri Trilokpal and Shri Prem Chand were not men of veracity. It is not the case of the claimant, that they were given bribe or some corrupt inducement of temporal gain to testify facts against him. On close scrutiny of their depositions, I could not find any inherent infirmity or defect to brand their deposition as unworthy of credit. I am of the considered opinion that Shri Trilokpal and Shri Prem Chand are reliable and worthy of credence. Relying facts unfolded by them, it is concluded that the account was opened in Maharani Bagh branch of the bank in the name of Ms. Sangeeta under guardianship of her father. Out of that account, a sum of Rs. 39979.70 was siphoned by someone through a fake negotiable instrument. When Shri Prem Chand came to know about that fraud, complaints were made in that regard by Shri Prem Chand as well as his brother Shri Trilokpal. In complaint Ex. MW2/134, it has been made clear that the claimant approached Shri Trilokpal and tried to persuade him not to proceed with the matter any further. He paid a sum of Rs. 20,000.00 to Shri Trilokpal, in order to induce him not to proceed further with the matter.

25. During course of his testimony, claimant could not rebut factum of making a complaint against him by Shri Prem Chand and Shri Trilokpal. Compact disc containing footage of CCTV camera film was produced before the Tribunal. When said CD was played and claimant was questioned as to whether on 31.01.2006 Shri Trilokpal visited him in the branch of the bank from 11.00 a.m. to 11.15 a.m., to which proposition he answered in affirmative. He conceded that Shri Trilokpal talked to him about the account of Ms. Sangeeta. He offered an explanation that since Shri Trilokpal wanted new currency notes, he paid a sum of Rs. 20,000.00 (in denomination of Rs.1000). According to him, old currency notes were handed over by Shri Trilokpal to the cashier, while he accepted new currency notes from him. When confronted, claimant conceded that no such facts were projected by him during the course of enquiry. Thus, it is emerging over the record that for the first time, claimant offered an explanation that a sum of Rs. 20,000.00 was paid by him to Shri Trilokpal on 31.01.2006, in lieu of old currency notes given by him to the cashier. Explanation offered is farther from truth. How can an employee of a bank would make payment in lieu of money accepted by a different employee on a different seat, is a proposition which has not been answered by the claimant. He could not explain as to how he could account for a sum of Rs. 20,000.00 paid by him through teller machine, which amount was allegedly paid to the cashier at a different counter. Obviously, explanation offered is not in consonance with ordinary human behavior and

normal course of business, undertaken in a bank. His silence for a period of 4 years over the matter speaks volumes about veracity of those facts. He was served with charge sheet on 20.02.2008 to which he made written statement of defence. He entered into the witness box on 01.12.2008 to testify facts before the Enquiry Officer. Neither in his statement of defence nor in his testimony, he opted to explain that a sum of Rs. 20,000.00 was paid by him to Shri Trilokpal in lieu of old currency notes handed over by him to the Head Cashier. This, I am constrained to conclude that the explanation offered is nothing but an afterthought. His explanation is brushed aside. When his explanation is discarded, it emerged over the record that the claimant paid a sum of Rs. 20,000.00 to Shri Trilokpal in order to dissuade him and Shri Prem Chand from proceeding further with their complaint Ex.MW2/134 and Ex.MW2/135. One may conclude that the claimant was beneficiary of the fraud and in order to cover up his misdeeds, he tried to pacify Shri Trilokpal and Shri Prem Chand by paying a sum of Rs. 20,000.00 to them, as unfolded in complaint Ex.MW2/134.

26. Shri Prem Chand asserts in his testimony that a sum of Rs. 39979.70 was withdrawn from the account of Ms. Sangeeta in a fraudulent manner. The bank transferred Rs. 19979.70 in the account of Ms. Sangeeta, which was withdrawn by her, after tendering an indemnity bond Ex. MW9/1. By way of paying a sum of Rs. 19,979.70 to Ms. Sangeeta, the bank adjusted sum of Rs. 20,000.00 paid to Shri Trilokpal by the claimant. These facts were confirmed by Shri Trilokpal also. Claimant had not disputed these facts. Thus, it is emerging over the record that a sum of Rs. 39979.70 was paid to Ms. Sangeeta, adjusting Rs. 20,000.00 paid by the claimant to Shri Trilokpal, besides transferring a sum of Rs. 19979.70 in her account. These facts go to establish that the amount paid by the claimant to Shri Trilokpal was treated as part of the amount, which bank was supposed to reimburse to the account holder. On this proposition too, the claimant opted to maintain a posture of silence. Hence, I am constrained to conclude that the claimant could not raise an accusing finger that a sum of Rs. 20,000.00 paid by him to Shri Trilokpal was treated by the bank as part payment received by the account holder in lieu of money, which was siphoned out of her account. Claimant never attempted to assert that the said amount of Rs. 20,000.00 was ever reimbursed to him by the bank.

27. Shri R.S. Pangtey unfolds that withdrawal form Ex.MW2/41 was used in the account of Ms.Sangeeta. This document makes it apparent that request for withdrawal of Rs. 39979.70 was made to the bank and the document was entered in the system by the claimant. Shri Pangtey unfolds that he passed the withdrawal form for payment. Thus, out of facts unfolded by Shri Pangtey, it crystallized that withdrawal form Ex. MW2/41 was entered into the

system by the claimant and Shri Pangtey passed that withdrawal form for payment. Can it be said that Shri Pangtey was a party to that fraud. For an answer, facts unfolded by Shri Trilokpal are to be scanned again. At the cost of repletion, it is pointed out that the claimant approached Shri Trilokpal and paid a sum of Rs. 20,000.00 to him in order to dissuade him and his brother from proceeding with the matter. Had Shri Pangtey been a party to the conspiracy, he would have also associated himself with the claimant in the process of making the complainant and his brother as their protege. These facts indicate that it was the claimant alone who manipulated fraud and withdrew a sum of Rs.39979.70 out of account of Ms.Sangeeta on forged withdrawal slip. Amount referred above, indicate that maturity value of the account as on 25.05.2005 was withdrawn out of the account of Ms. Sangeeta. Since entire amount was withdrawn out of that account, it is evident that the account was closed without any authorization from the account holder. All these facts would lead me to conclude that the claimant committed fraud of Rs. 39979.70 out of the account of Ms.Sangeeta, when he closed her account without any mandate and removed the aforesaid amount on forged withdrawal slip and paid a sum of Rs. 20,000.00 to Shri Trilokpal in order to silence him in the matter.

28. Withdrawal forms Ex. MW2/34, Ex. MW4/5, Ex. MW4/6 and Ex. MW4/7 were used to withdraw amount in account being maintained by Shri Vikas Daga, deposes Shri Pangtey. He announces that all these withdrawal forms were entered in the system and passed for payment by Shri Pathak. He explains that signatures of the account holder on Ex. MW4/6 were verified by Shri Pathak while on other withdrawal forms, he (witness) had verified signatures of the account holder. Shri Pangtey explains that since signatures of Shri Daga were not loaded in the system, he verified his signatures on aforesaid withdrawal forms at the instance of Shri Pathak. Shri Pathak had drawn a line on Ex. MW4/6 in token of verification of signatures of the account holder. Amount denoted on the said withdrawal form was within his competence to pass. The account of Shri Vikas Daga was not transferred to the category of dormant account. During course of his cross-examination Shri Pangtey admits that he passed the withdrawal forms Ex. MW2/34, Ex.MW4/5, Ex. MW4/6 and Ex. MW4/7 for payment. However, he explains that payment in respect of withdrawal form Ex. MW4/5 was released by Shri Pathak to the customer. Claimant nowhere disputes that fraud took place in the said account. As per case projected by the claimant account of Shri Vikas Daga was one of the accounts in which fraud took place. The claimant had detailed those 44 accounts in Ex. MW6W1. Thus, it is emerging over the record that out of the account of Shri Vikas Daya, a sum of Rs.7000.00, Rs.10000.00, Rs. 5000.00 and Rs. 7000.00 were withdrawn on the strength of withdrawal form Ex. MW2/34, Ex. MW4/5, Ex. MW4/6

and Ex.MW4/7 respectively by fictitious person. Claimant has verified signatures of the account holder on Ex.MW4/6 by drawing a vertical line, as per practice prevalent in the banking industry. Signatures on the other three withdrawal forms were verified by Shri Pangtey at the instance of the claimant, when he claimed that the account holder was known to him.

29. No evidence was brought over the record to the effect that signatures of Shri Vikas Daga on the aforesaid withdrawal forms were forged by the claimant. However, it has been established that signatures on the aforesaid withdrawal forms were not of the account holder. On Ex.MW4/6, claimant verified signatures of the account holder and thus facilitated passing of that instrument for payment. Signatures of the account holder on Ex.MW2/34, Ex.MW4/5 and Ex.MW4/6 were verified by Shri Pangtey at the instance of the claimant. As deposed by the witness, claimant persuaded him to verify signatures of Shri Vikas Daga. Since signatures of the account holder were not loaded in the system, he verified his signatures on the withdrawal forms at the instance of the claimant. Deposition of the witness on that count remained unassailed. Even otherwise evidence in that regard was found to be convincing and reliable. Facts unfolded by Shri Pangtey are relied being worthy of credence. Thus it is evident that the claimant used his official position by persuading Shri Pangtey to verify signatures of the account holder on the aforesaid withdrawal forms and facilitated payment of those withdrawal forms in favour of fictitious person.

30. Saving Bank account No.17767 was being maintained by Shri Sanjay Gupta in Maharani Bagh branch of the bank. Account opening form Ex.MW2/35 relates to his account, deposes Shri Pangtey. Withdrawal form Ex.MW4/8 and Ex.MW4/9 relate to the account of Shri Sanjay Gupta, which withdrawal forms were entered and entries created in the system by Shri Pathak. Withdrawal form Ex.MW4/9 was verified by Shri Pathak while withdrawal form Ex.MW4/8 was verified by him, declares Shri Pangtey. Payment of the amounts denoted on those withdrawal forms were released thereafter. Witness explains that Ex.MW4/9 was transmitted to him by Shri Pathak. Since there was rush in the branch, he had not asked Shri Pathak to send the instrument to the Branch Manager, as he was not competent to handle dormant account. As the system had accepted his password, he passed aforesaid withdrawal forms for payment, testifies Shri Pangtey.

31. Claimant does not dispute that fraud took place in the account of Sanjay Gupta, since his account finds place in the list of 44 accounts mentioned in Ex.MW6/W1, which were subject-matter of fraud. Thus, one can say that withdrawal forms Ex.MW4/8 and Ex.MW4/9 bear forged signatures of the account holder. By verification of

signature of the account holder on Ex.MW4/9, the claimant persuaded Shri Pangtey to pass that withdrawal form for payment. At his instance, Shri Pangtey verified signatures of the account holder on Ex.MW4/8, which was also a forged document. However the bank could not establish that signatures of the account holder on Ex.MW4/8 and Ex.MW4/9 were forged by the claimant. But ample evidence came over the record to the effect that the claimant has misused his official position and facilitated passing of those instruments, which act resulted into frauds.

32. Ms. Deepti Gupta and Shri Naval Gupta opened joint saving fund account No.18125 with the bank on 30.08.1993. Their account opening form has been proved as Ex.MW2/37, unfolds Shri Pangtey. Withdrawal forms Ex.MW4/11 and Ex.MW4/12 relate to that account. Claimant entered these withdrawal forms and created entries in the system in that regard. Shri Pangtey passed these two withdrawal forms for payment. Ex.MW4/12 was verified by Shri Pathak and thereafter it was passed for payment, deposes the witness. He verified signatures of the account holder by drawing a line, underneath the signatures. During cross-examination of the witness, the claimant had not tried to dispel the fact that payment of withdrawal form Ex.MW4/11 was released by him in favour of the customer. As per admission made by the claimant, fraud was committed in the aforesaid account. No evidence came over the record to the effect that it was the claimant who forged signatures of the account holder on aforesaid two withdrawal forms. But the bank could establish that the claimant verified signatures of the account holder on Ex.MW4/12. and persuaded Shri Pangtey to pass the withdrawal form for payment. Thus he facilitated commission of fraud by using his official position, when he verified forged signatures of the account holder on Ex.MW4/12.

33. Saving bank account No.7359 was being maintained by Ms. Som Sharma at the bank. Withdrawal slips Ex.MW5/1, Ex.MW5/2 and Ex.MW5/3 and cheque Ex.MW5/4 were drawn on the aforesaid account, unfolds Shri Marcus Tigga. Ex.MW5/1 was verified by him at the instance of the claimant. Shri Pathak verified signatures of the claimant on Ex.MW5/3 and in token of that fact put his initials on the instrument, deposes the witness. Claimant issued token to the customer relating to Ex.MW5/1 and Ex.MW5/2, hence it is evident that these instruments were entered in the system by the claimant. These instruments were used in the account of Ms.Som Sharma after a gap of seven years, when last transaction was made. Claimant could not dispel the proposition that he verified signatures of Ms.Som Sharma on Ex.MW5/3, when testimony of Shri Tigga was purified by way of cross-examination. It was also not disputed that token No.78 and token No.72 respectively were issued by him to the customer in respect of Ex.MW5/1 and Ex.MW5/2. Resultantly, the bank could

bring it to light that these instruments were handled by the claimant. He persuaded Shri Tigga to pass Ex.MW5/3 for payment, by way of verification of signatures of the account holder. It is not a disputed fact that fraud took place in the said account, as name and account number of Ms.Som Sharma appear in Ex.MW6/W1. However, there is vacuum of evidence to this affect that signatures on these instruments were forged by the claimant. But evidence brought over the record is sufficient to conclude that the claimant persuaded Shri Tigga to pass Ex.MW5/3 for payment, when he verified signatures of the account holder on that document. It is evident that this way, the claimant facilitated fraud in account No.7359 being maintained by Ms.Som Sharma.

34. Shri Shakeel Ahmed opened saving bank account No.9007 with the bank. Ex.MW5/5 was drawn on his account, deposes Shri Tigga. Signatures of the account holder were verified by the claimant on Ex.MW5/5 and thereafter it was passed for payment by the witness, as unfolded by him. No efforts were made by the claimant to dispute that signatures of the account holder on Ex.MW5/5 were verified by him. By putting his signature on Ex.MW5/5, the claimant persuaded Shri Tigga to pass that instrument for payment. Admittedly, fraud was committed in that account, as it finds place in Ex.MW6/W1. However, it has not come over the record that it was the claimant who forged signatures of the customer on that document. Evidence, referred above, is sufficient to conclude that the claimant persuaded Shri Tigga to pass that instrument for payment and thus facilitated commission of fraud.

35. Whether claimant has been able to rebut facts, testified by the witnesses referred above? For an answer, facts unfolded by the claimant in his affidavit Ex.WW1/B are to be scanned. In his affidavit Ex.WW1/B, tendered as evidence, claimant presents that in count No.1 of the charge sheet, 21 accounts and in count No.2, 60 accounts are mentioned, which are all dormant accounts. According to him, dormant accounts are either to be operated by the In-charge or authorized officer. He asserts that neither he was the In-charge nor authorised officer, hence not competent to operate the accounts referred above. As detailed by Shri Ajay Sharma, Shri R.S. Pangtey and Shri Marcus Tigga, claimant persuaded them to pass withdrawal slips/cheques for payment claiming that account holders were well known to him. Accounts, which were subject- matter of the fraud, were not shown as dormant accounts in the system. It facilitated the claimant to put his designs into action.

36. Accounts of Ms.Draupadi, Shri Govinda and Ms.Kalawati were illiterate accounts. Claimant projects that these accounts were to be operated by the Branch Manager. The account holder is supposed to submit his/her pass book to the bank and the Branch Manager is

under an obligation to compare photo of the account holder with facial features of the person present before him and on being satisfied as to his identity, he is to obtain thumb impression of the account holder in his presence. In such a situation, those illiterate accounts could not be handled by him. This contention has been dealt with in succeeding section. Facts detailed by the claimant in his affidavit Ex.WW1/B nowhere absolve him of the misconduct, referred above. Resultantly it is concluded that the bank could succeed in establishing a few of the charges, out of those mentioned in the charge sheet dated 20.02.2008.

37. For certain counts of charges, the bank has not been able to establish misconduct against the claimant. Those circumstances are detailed in succeeding sections. Shri Ajay Sharma unfolds that cheque Ex.MW3/1 was presented before him, when it was entered in the system by the claimant. He noted an exception in the system to the effect that the "cheque not entered". He recorded a noting on reverse of the cheque, which noting is Ex.MW3/3 and sought instructions from his senior. Manager of the branch gave directions on `reverse of the cheque, which are Ex.MW3/4. After going through those directions and application of his judicious mind, he cleared the cheque for payment. Witness explains that Shri Pathak created an entry into the system at 11.20 p.m. The cheque was entered at 12.50 noon by the witness, as emerge out of Ex.MW2/191. He released the payment of the said cheque at 2.53 p.m. as highlighted in Ex.MW2/191. From these facts, one may note that cheque Ex.MW3/1 was initially handled by the claimant who created an entry in the system in that regard at 11.22 a.m. Shri Sharma further deposed that cheque for a sum of Rs.160000.00 was cleared through computer system on 14.01.2006, copy of which is Ex.MW3/2. This cheque was sent by the claimant for clearing. System made an exception 'cheque not entered'. He obtained instructions of the Branch Manager and cleared the cheque for payment. According to him, Shri Pathak ought not to have entered the cheque in the system for payment. However, he concedes that it was part of the duty of the claimant to create an entry in respect of an instrument which was handed over to him for payment by a customer. In order to show that fraud was committed by the claimant in that regard, it was incumbent upon the bank to highlight that the claimant forged signatures on the said cheques or created entry in the system, being in league with the person who forged signature of Shri Anis Ahmed on those two cheques. The bank would have been in a advantageous position in case it were brought over the record that the claimant shared amount withdrawn through these cheque. No evidence in that regard has been brought over the record. Mere suspicion or surmises would not lead this Tribunal to conclude that the claimant was a party to the fraud in respect of amount withdrawn on the strength of the aforesaid two cheques.

38. Shri R.S. Pangtey unfolds that the claimant entered the withdrawal form Ex.MW2/20 in the computer system. He passed the said withdrawal form for payment at his instance, since the claimant told him that the customer was known to him. Shri Pangtey made an oscillating statement when he testified that the said withdrawal form was passed by the claimant since his password was within his knowledge. He took a somersault and testified that the said withdrawal form was passed by him at the instance of the claimant. He explains that the account of Ms.Krishna Bambi was dormant and it could be operated by the Branch Manager/authorised officer. He admits that he was neither the In-charge of the branch nor authorized officer to operate dormant account. When a customer declares his identity to the Incharge/authorised officer, who on being satisfied makes the account operative. Thus, out of facts unfolded by Shri Pangtey in that regard, it emerges that this withdrawal form was passed for payment by the witness. Claim that it was done by him at the instance of the claimant, does not get substantiated from any material evidence. It was obligatory on him to obtain orders of the Incharge/authorized officer to make the account operative. Such orders were neither obtained nor he tried to ascertain, after going through the pass book, that the account was inoperative since long. Out of facts unfolded by him, one cannot reach a conclusion that the signatures on the withdrawal form Ex.MW2/20 were forged by the claimant and thereafter he facilitated payment of an amount of Rs.17000.00 to an unauthorized person. Uncorroborated facts, unfolded by Shri Pangtey, would not lead this Tribunal to conclude that the bank had been able to establish that withdrawal form Ex.MW2/20 was forged by the claimant and thereafter payment was obtained, persuading the witness to pass it. Consequently, it is apparent that ocular facts testified by Shri Pangtey in that regard would not lead the Tribunal to conclude that the said withdrawal slip was passed for payment by Shri Pangtey at the instance of the claimant.

39. Relating to fraud in account No.1176889, being maintained by one Shri Sompal, Shri Pangtey details that cheques Ex.MW2/54 and Ex.MW2/54A were passed by him for payment. Cheques were entered in the system by Shri Pathak, who verified signatures of the account holder on these two cheques. Shri Pathak told him that Shri Sompal was personally known to him. Payment of these two cheques were made to Shri Amit and Shri Sunil respectively. The account holder was doing some construction work and he (witness) should make payment since he (claimant) had verified signatures of the account holder on those cheques, deposes Shri Pangtey. Shri Pathak signed on these two cheques in token of factum of verification of signatures of the account holder. Shri Pathak had drawn vertical line on those cheques in token of factum of verification of signatures of the account holder, unfolds the witness. When cheques Ex.MW2/54 and Ex.MW2/54A are scrutinized, it came to light that

signatures on those cheques were verified by way of drawing vertical line, as per prevalent practice in the banking industry. Except these facts, no other evidence has been brought over the record to project that payments of the aforesaid two cheques were received by fraudulent means. Not even an iota of fact has been brought to suggest that those cheques were neither drawn by Shri Sompal nor handed over to Shri Amit and Sunil to collect payment. In this situation, I am constrained to say that evidence brought over the record in respect of account No.1176889 is deficient. On mere surmises or suspicion, it cannot be concluded that fraud was committed in that account and payment denoted on the aforesaid cheque were obtained by Shri Amit and Shri Sunil by fraudulent means. An accusing finger cannot be raised on the claimant to the effect that he was a party to that fraud.

40. Relating to account No.118594 being maintained by one Shri Akhilesh Kumar, Shri Pangtey deposed that Ex.MW4/1 to Ex.MW4/3 were used on 22.09.2005, 25.09.2005 and 27.09.2005 to withdraw money out of the said account. Ex.MW4/1 was entered into the system by Shri Pathak and passed by him (witness). Payment was made by Shri Pathak, since it was within his competence to release the payment. However he concedes that the said withdrawal form was passed by him without consulting specimen signatures of the account holder from the record. Since signature of the account holder were not feeded in the system, there were so many accounts to be physically matched and under this situation, he enquired from Shri Pathak as to the identity of the account holder, who told him that the account holder was personally known to him. He presents that his signatures do not appear on Ex.MW4/2 and Ex.MW4/3, hence he cannot say as to who passed those withdrawal forms. However, he explains that the amounts mentioned on Ex.MW4/2 and Ex.MW4/3 were beyond competence of Shri Pathak to release for payment. He explains that signatures of the account holder, namely, Shri Akhilesh Kumar does not match on Ex.MW4/1, Ex.MW4/2 and Ex.MW4/3 respectively, with his signatures on account opening form Ex.MW2/25.

41. Though Shri Pangtey claims that signatures of the account holder did not match on aforesaid withdrawal forms, yet I undertook an exercise of comparing signatures of the account holder on Ex.MW4/1 to Ex.MW4/3 with his specimen signatures appearing on account opening form Ex.MW2/25. On comparison, it emerged over the record that pictorial effect of specimen signatures appearing on Ex.MW2/25 is different than the signatures appearing on Ex.MW4/1, Ex.MW4/2 and Ex.MW4/3. Movements on specimen signatures are better finger movements than the signatures appearing on the aforesaid withdrawal forms. In letter “अ” in specimen signatures, the account holder forms a loop at the end while in signatures on withdrawal forms, no such loop is formed. Word “ख” in the specimen signatures starts with a curved line and then writer takes a

descent from in-between, while no such formation appears in the signatures on withdrawal forms. Word 'ल' in specimen signatures start with a small stroke and then writer draws a big crescent while in withdrawal forms, no such formation appears. Therefore, from comparison of these signatures on the account opening form with the aforesaid withdrawal forms, the Tribunal is of the opinion that signatures on those withdrawal were not drawn by the account holder. Resultantly, it is clear that the payment was drawn on the strength of the aforesaid withdrawal forms by a fictitious person and not by the account holder.

42. No evidence has been adduced by the bank to project as to who had signed aforesaid withdrawal forms or as to how the claimant was involved in that fraud. Creating an entry in the system, in respect of the aforesaid withdrawal forms, was part of duties of the claimant. Withdrawal form Ex.MW4/1 was passed by Shri Pangtey, as testified by him. He could not explain as to who passed the other two withdrawal forms. Evidence is deficient to conclude that the claimant was the mastermind, who got aforesaid forged withdrawal forms presented for payment and persuaded the authorities to release payment in favour of fictitious person. Resultantly, it is said that the bank has not been able to establish by cogent evidence that it was the claimant who perpetrated fraud and received payment of the amounts, mentioned in the aforesaid withdrawal forms, out of the account of Shri Akhilesh.

43. Mst. Nishat Ashraf was operating saving fund account No.17886 since 17.04.1993. Withdrawal form Ex.MW4/10 pertaining to that account was entered into the system and Shri Pathak created an entry on 15.09.2005. The said withdrawal form was passed for payment by him. Token number was issued on the withdrawal form and thereafter payment was released to the customer by the Head Cashier. Name and account number of Mst. Nishat Ashraf finds place in Ex.MW6/W1 which fact highlights that the claimant nowhere disputes that fraud took place in that account too. However, evidence is deficient to the effect that withdrawal form Ex.MW4/10 was forged by the claimant or he persuaded Shri Pangtey to pass the said withdrawal form for payment. Since payment was released by the Head Cashier to the customer, in that situation, it cannot be said that the claimant made payment of the said withdrawal form in favour of fictitious person.

44. Account No.13960 was being maintained by Ms. Kanwal Suri with the bank. Her specimen signature card is Ex.MW2/40, declares Shri Pangtey. Withdrawal form Ex.MW4/13 was entered and entry created in the system by Shri Pathak. He passed that withdrawal for payment. As per case projected by the claimant through document Ex.MW6/W1, fraud had taken place in that account too. However, it has not been highlighted that the claimant forged signatures of the account holder on

withdrawal form Ex.MW4/13. Withdrawal form was passed for payment by Shri Pangtey since it was beyond the competence of the claimant to pass it. Therefore, it creeps over the record that the evidence brought by the bank is deficient to conclude that claimant forged signatures of the account holder on withdrawal form Ex.MW4/13, misused his official position and facilitated payment of the said instrument.

45. Shri Govinda, an illiterate person, was maintaining saving bank account No.11020 with the bank. Withdrawal slips Ex.MW5/6, Ex.MW5/7, Ex.MW5/8 and Ex.MW5/9 were drawn on his account, deposes Shri Tigga. He deposes that these withdrawal slips were passed by him for payment, after verification of thumb impression of the account holder. He hastens to add that these withdrawal slips were passed by him at the instance of Shri Pathak. When he was away inside the bank premises for some official job, Shri Pathak told him on return that he had checked everything and he should pass those withdrawal forms for payment. According to the witness, his identity number was within the knowledge of Shri Pathak. Facts unfolded by Shri Tigga to the effect that these withdrawal forms were passed by him at the instance of the claimant, do not inspire confidence. Account of an illiterate person is to be operated when the account holder appears alongwith his/her pass book. His/her identity could be verified by comparing photograph affixed in the pass book with facial features of the customer. The officer dealing with such an account cannot claim to have acted at the instance of some other officer/ official. Considering all these facts, one cannot say that the claimant used his official position and facilitated fraud in the account of Shri Govinda.

46. Shri D.R. Sharma was maintaining saving bank account No.5534 in the bank. Cheque Ex.MW5/10 was drawn on his account, deposes Shri Tigga. He deposes that he verified signatures of the account holder on Ex.MW5/10 at the instance of Shri Pathak. According to him, on 18.08.2004 Shri Pathak came in the branch despite being deputed for training. He (witness) passed Ex.MW5/10 at his instance. Shri Pathak entered that cheque in the record himself. However, witness concedes that he had not obtained signatures of Shri Pathak on the cheque referred above. It has also not been disputed that on 18.08.2004, centralized computerization had not started in the branch. Under these circumstances, it does not lie in the mouth of the witness to say that the claimant entered Ex.MW5/10 in the system and then handed it over to him for payment. Admittedly, the account of Shri Sharma was one of those accounts wherein fraud took place. However, the bank had not been able to establish that Ex.MW5/10 was either forged by the claimant himself or he got it forged from someone and thereafter persuaded Shri Tigga to pass it for payment.

47. Account No.6369 was being maintained by Ms. Draupadi at the aforesaid branch of the bank. Since Ms. Draupadi was an illiterate, she could operate the account in person, by way of presentation of her pass book to the bank authorities. Ex.MW5/11 was drawn on her account, deposes Shri Tigga. He explains that he verified signatures of the account holder at the instance of Shri Pathak and passed Ex.MW5/11 for payment. However the witness concedes that withdrawal slip Ex.MW5/11 pertains to the period when computerization had not started in the branch. Account of an illiterate person is to be operated by the account holder, by way of presentation of his/her passbook. In that situation, Shri Tigga would have verified her identity and ought to have obtained her thumb impression on the said withdrawal slip. These facts make it apparent that deposition of Shri Tigga in that regard are farther from the truth and, accordingly, brushed aside.

48. Saving bank account No.13143 was being maintained by Ms.Nidhi Arora and Shri Ramesh Arora jointly. Withdrawal slip Ex.MW5/12 was drawn on the said account, testified Shri Tigga. He verified signatures of the account holder on the said withdrawal form at the instance of the claimant and passed it for payment. However these facts appear to be afterthought, since the witness concedes that while facing domestic action, he took a stand that he had verified documents relating to the account of Nidhi Arora personally and passed Ex.MW5/12 for payment. Therefore, it emerged over the record that in respect of Ex.MW5/12, witness had unfolded discrepant facts, which do not stand together. After lapse of time, he deposes that Ex.MW5/12 was passed by him at the instance of the claimant. These facts are found to be farther from the truth, hence discarded. Testimony of Shri Tigga cannot lead this Tribunal to conclude that withdrawal slip Ex.MW5/12 was passed by him at the instance of the claimant.

49. Account No.13785 was being maintained by one Ms.Deepa at Maharani Bagh branch of the bank. Ex.MW 5/13, Ex.MW5/14 and Ex.MW5/15 were drawn on that account, declares Shri Tigga. Ex.MW5/15 was verified by him and passed for payment. He passed Ex.MW5/13 and Ex.MW5/14 without verification of signatures of the account holder. He hastens to add that these documents were passed by him at the instance of the claimant. He makes a candid admission that in respect of these withdrawal slips, he claimed before the Enquiry officer that these withdrawal slips were passed by him after verifying signatures of the account holder. It is emerging over the record that initially Shri Tigga had not taken any stand to the effect that these withdrawal forms were passed by him for payment at the instance of the claimant. Now, conveniently, he takes a stand to the effect that these withdrawal forms were passed at the instance of the claimant. It is evident that facts unfolded by this witness

are an afterthought. It would be highly unsafe to rely on aforesaid facts and conclude that these withdrawal forms were passed by Shri Tigga for payment at the instance of the claimant.

50. Account No.1265 was being maintained at Maharani Bagh branch of the bank in the name of Namrata Karir under guardianship of her father, narrates Shri Tigga. Withdrawal slip Ex.MW5/16 was passed for payment at the instance of Shri Pathak. When Ex.MW5/16 is perused, it came to light that a sum of Rs.52579.49 was drawn on the strength of the instrument in the said account. Witness concedes that the account was closed and thereafter aforesaid amount was released in favour of the account holder. Account No.7485 was being maintained at Maharani Bagh branch of the bank in the name of Ms.Rekha Jain deposes Shri Tigga. Withdrawal slip Ex.MW5/17 was passed for payment at the instance of Shri Pathak. When Ex.MW5/17 is perused, it came to light that a sum of Rs.25370.59 was drawn on the strength of the instrument in the said account. Account No.5395 in the name of Ashu Gupta was being maintained at Maharani Bagh branch of the bank, projects Shri Tigga. Withdrawal slip Ex.MW5/18 was passed for payment at the instance of Shri Pathak. When Ex.MW5/18 is perused, it came to light that a sum of Rs.1657.57 was drawn on the strength of the instrument in the said account. Witness accepts that aforesaid the accounts were closed and thereafter maturity amount were released in favour of the account holder(s). It has also not been disputed that for closure of the account, Branch Manager was authorized to issue instructions. Resultantly, it is emerging over the record that presence of the account holder was a must for closure of the account. In that situation, there was no occasion for Shri Tigga to pass above withdrawal slips at the instance of the claimant. Facts unfolded by him in that regard are nothing but sheer lie. These facts are discarded. These facts nowhere absolve the claimant for the liability of misconduct, proved against him.

51. What should be the appropriate punishment, which can be awarded to the claimant, is a proposition which would be addressed to by this Tribunal? For an answer to this proposition it would be expedient to have a glance on legal dictum. It is a matter of common knowledge that right of an employer to award punishment of discharge or dismissal is not unfettered. The punishment imposed must commensurate with gravity of the misconduct, proved against the delinquent workman. Prior to enactment of section 11-A of the Act, it was not open to the industrial adjudicator to vary the order of punishment on finding that the order of dismissal was too severe and was not commensurate with the act of misconduct. In other words, the industrial adjudicator could not interfere with the punishment as it was not required to consider propriety or adequacy of punishment or whether it was excessive or

too severe. The Apex Court, in this connection, had, however, laid down in *Bengal Bhatdee Coal Company* [1963 (I) LLJ 291] that where order of punishment was shockingly disproportionate with the act of the misconduct which no reasonable employer would impose in like circumstances, that itself would lead to the inference of victimization or unfair labour practice which would vitiate order of dismissal or discharge. But by enacting the provisions of section 11-A of the Act, the Legislature has transferred the discretion of the employer, in imposing punishment, to the industrial adjudicator. It is now the satisfaction of the industrial adjudicator to finally decide the quantum of punishment for proved acts of misconduct, in cases of discharge or dismissal. If the Tribunal is satisfied that the order of discharge or dismissal is not justified in any circumstances on the facts of a given case, it has the power not only to set aside order of punishment and direct reinstatement with back wages, but it has also the power to impose certain conditions as it may deem fit and also to give relief to the workman, including award of lesser punishment in lieu of discharge or dismissal.

52. It is established law that imposing punishment for a proved act of misconduct is a matter for the punishing authority to decide and normally it should not be interfered with by the Industrial Tribunals. The Tribunal is not required to consider the propriety or adequacy of punishment. But where the punishment is shockingly disproportionate, regard being had to the particular conduct and past record, or is such as no reasonable employer would ever impose in like circumstance, the Tribunal may treat the imposition of such punishment as itself showing victimization or unfair labour practice. Law to this effect was laid by the Apex Court in *Hind Construction and Engineering Company Ltd.* [1965 (I) LLJ 462]. Likewise in *Management of the Federation of Indian Chambers of Commerce and Industry* [1971 (II) LLJ 630] the Apex Court ruled that the employer made a mountain out of a mole hill and had blown a trivial matter into one involving loss of prestige and reputation and as such punishment of dismissal was held to be unwarranted. In *Ram Kishan* (1996 (I) LLJ 982) the delinquent employee was dismissed from service for using abusive language against a superior officer. On the facts and in the circumstances of the case, the Apex Court held that the punishment of dismissal was harsh and disproportionate to the gravity of the charge imputed to the delinquent. It was ruled therein, “when abusive language is used by anybody against a superior, it must be understood in the environment in which that person is situated and the circumstances surrounding the event that led to the use of abusive language. No straight-jacket formula could be evolved in adjudicating whether the abusive language in the given circumstances would warrant dismissal from service. Each case has to be considered on its own facts”

53. In *B.M.Patil* [1996 (II) LLJ 536], Justice Mohan Kumar of Karnataka High Court observed that in exercise of discretion, the Disciplinary Authority should not act like a robot and justice should be moulded with humanism and understanding. It has to assess each case on its own merit and each set of fact should be decided with reference to the evidence recording the allegation, which should be basis of the decision. The past conduct of the worker may be a ground for assuming that he might have a propensity to commit the misconduct and to assess the quantum of punishment to be imposed. In that case a conductor of the bus was dismissed from service for causing revenue loss of 50p to the employer by irregular sale of tickets. It was held that the punishment was too harsh and disproportionate to the act of misconduct.

54. After insertion of section 11-A of the Act, the jurisdiction to interfere with the punishment is there with the Tribunal, who has to see whether punishment imposed by the employer commensurate with the gravity of the act of misconduct. If it comes to the conclusion that the misconduct is proved, it may still hold that the punishment is not justified because misconduct alleged and proved is such as it does not warrant punishment of discharge or dismissal and where necessary, set aside the order of discharge or dismissal and direct reinstatement with or without any terms or conditions as it thinks fit or give any other relief, including the award of lesser punishment, in lieu of discharge or dismissal, as the circumstance of the case may warrant. Reference can be made to a precedent in *Sanatak Singh* (1984 Lab.I.C.817). The discretion to award punishment lesser than the punishment of discharge or dismissal has to be judiciously exercised and the Tribunal can interfere only when it is satisfied that the punishment imposed by the management is highly disproportionate to the decree of the guilt of the workman. Reference can be made to the precedent in *Kachraji Motiji Parmar* [1994 (II) LLJ 332]. Thus it is evident that the Tribunal has now jurisdiction and power of substituting its own measure of punishment in place of the managerial wisdom, once it is satisfied that the order of discharge or dismissal is not justified. On facts and in the circumstances of a case, section 11A of the Act specifically gives two folds powers to the Industrial Tribunal, first is virtually the power of appeal against findings of fact made by the Enquiry Officer in his report with regard to the adequacy of the evidence and the conclusion on facts and secondly of foremost importance, is the power of reappraisal of quantum of punishment.

55. In *Bharat Heavy Electricals Ltd.* [2005 (2) S.C.C. 481] the Apex Court was confronted with the proposition as to whether power available to the Industrial Tribunal under section 11-A of the Act are unlimited. The Court opined that “there is no such thing as unlimited jurisdiction vested with any judicial or quasi judicial forum and

unfettered discretion is sworn enemy of the constitutional guarantee against discrimination. An unlimited jurisdiction leads to unreasonableness. No authority, be it administrative or judicial, has any power to exercise discretion vested in it unless the same is based on justifiable grounds supported by acceptable materials and reasons thereof". The Apex Court relied its judgement in *C.M.C. Hospital Employees Union* (1987 (4) S.C.C. 691) wherein it was held that "section 11-A cannot be considered as conferring an arbitrary power on the Industrial Tribunal or the Labour Court. The power under section 11-A of the Act has to be exercised judiciously and the Industrial Tribunal or Labour Court is expected to interfere with the decision of a management under section 11-A of the Act only when it is satisfied that the punishment imposed by the management is highly disproportionate to the degree of guilt of the workmen concerned. The Industrial Tribunal or Labour Court has to give reasons for its decision". In *Hombe Gowda Educational Trust* (2006 (1) S.C.C. 430) the Apex Court announced that the Tribunal would not normally interfere with the quantum of punishment imposed by the employer unless an appropriate case is made out therefore.

56. Power to set aside order of discharge or dismissal and grant relief of reinstatement or lesser punishment is not untrammelled power. This power has to be exercised only when Tribunal is satisfied that the order of discharge or dismissal was not justified. This satisfaction of the Tribunal is objective satisfaction and not subjective one. It involves application of the mind by the Tribunal to various circumstances like nature of delinquency committed by the workman, his past conduct, impact of delinquency on employer's business, besides length of service rendered by him. Furthermore, the Tribunal has to consider whether the decision taken by the employer is just or not. Only after taking into consideration these aspects, the Tribunal can upset the punishment imposed by the employer. The quantum of punishment cannot be interfered with without recording specific findings on points referred above. No indulgence is to be granted to a person, who is guilty of grave misconduct like cheating, fraud, misappropriation of employers fund, theft of public property etc. A reference can be made to the precedent in *Bhagirath Mal Rainwa* [1995 (I) LLJ 960].

57. As noted above, the claimant managed to prevail upon the authorised officers of the bank to pass forged/fabricated withdrawal forms/cheques, projecting that the account holders were known to him and their identity has been confirmed. Misconduct like cheating, fraud and misappropriation of employers funds are grave one, justifying punishment of dismissal from service. Question for consideration comes as to whether punishment awarded to the claimant was shockingly disproportionate

to his misconduct, justifying interference by this Tribunal? In *Firestone Tyre and Rubber Company of India (Pvt.) Ltd.* [1973 (1) S.C.C. 813], the Apex Court ruled that once misconduct is proved, the Tribunal had to sustain order of punishment unless it was harsh indicating victimization. It has been further laid therein that if a proper enquiry is conducted by an employer and a correct finding arrived at regarding the misconduct, the Tribunal, even though now empowered to differ from the conclusion arrived at by the management, will have to give very cogent reasons for not accepting the view of the employer. Again in *Divisional Controller K.S.R.T.C. (N.W.K.R.T.C.)* [2005 (3) S.C.C. 254] it was laid that question of quantum of punishment would not be weighed on amount of money misappropriated but it should be based on loss of confidence, which is a primary factor to be taken into account. Once a person is found guilty of misappropriating his employer's fund, there is nothing wrong for the employer to lose confidence or faith in such a person, awarding punishment of dismissal.

58. As proved by the bank, the claimant persuaded his superiors to believe that identity of the customer(s) stood confirmed and made them to pass forged withdrawal slips and cheques for payment. Being a computer savvy, he came to know that dormant accounts have not been locked, when same were entered into the system. He targeted dormant accounts and fictitious persons presented forged withdrawal slips and cheques for withdrawal of money out of those accounts. The claimant misused his official position and made his superiors believe as to the identity of those person as genuine account holders as a consequence of which belief they passed forged instruments for payment. The claimant acted with an intention of causing wrongful gain to himself as well as his associates and wrongful loss to the account holder(s) and the bank. Element of deceit and injury to the person deceived was there in the act committed by the claimant, hence it answered all ingredients of fraud. It is a matter of common knowledge that misconduct of fraud is of serious nature, warranting penalty of dismissal. Reference can be made to the precedent in *Tika Ram & Sons Ltd.* [1960 (1) LLJ 514 S.C.].

59. Punishment of dismissal from service without notice commensurate to the misconduct committed by the claimant. It cannot be said that the punishment awarded to the claimant was shockingly disproportionate to his misconduct, justifying interference by the Tribunal. The punishment of dismissal without notice cannot be said to be harsh, indicating victimization. One who commits misconducts, like cheating and fraud loses confidence of his employer. Therefore, I am of the considered opinion that the claimant has miserably failed to project that punishment awarded to him is to be substituted by any other punishment. The issue is, therefore, answered accordingly.

Issue No. 3

60. Much hue and cry has been made by the claimant asserting that he has been discriminated while awarding punishment. He claims that charge sheets were issued to 19 officers, besides him. None of them was awarded punishment of dismissal from service, argues Shri Mavi. As claimed, details of the officers, served with chargesheet and penalty awarded to them, are reproduced hereunder:

1. Shri P. N. Srivastava, Chief Manager Minor penalty of 'Reduction to one lower stage in the scale of pay for a period of one year without cumulative effect', vide orders dated 12.01.2008 of GM:HRD, Head Office.
2. Shri Anil Kashyap, Chief Manager Minor penalty of 'Censure' vide order dated 08.03.2008
3. Shri Ajay Sharma, Deputy Manager Minor penalty of 'Reduction to one lower stage in the time scale of pay for a period of one year without cumulative effect', vide orders dated 28.12.2007
4. Shri M. Tigga, Deputy Manager Minor penalty of 'withholding of one increment of pay for a period of one year without cumulative effect', vide order dated 28.12.2007
5. Shri Guru Prasad, Officer Minor penalty of 'withholding of one increment of pay for a period of one year without cumulative effect', vide order dated 28.12.2007
6. Shri R.S. Pangtey, Officer Minor penalty of withholding of one increment of pay for a period of one year without cumulative effect', vide order dated 28.12.2007
7. Shri B.C. Mastana, Manager Note of Caution, vide letter dated 20.10.2007
8. Shri L.K. Bansal, Manager Note of Caution, vide letter dated 20.10.2007
9. Ms. Rita Verma, Manager Dropped vide letter dated 20.10.2007

10. Shri Atul Garg, Senior Manager Minor penalty of 'Reduction to one lower stage in the time scale of pay for a period of one year without cumulative effect', vide order dated 29.12.2007
11. Shri S.K. Sehgal, Special Assistant Warning, vide order dated 19.02.2008
12. Smt. Smriti Raina, Special Assistant Warning, vide order dated 19.02.2008
13. Sh. Ashwani Kumar Sharma, Special Assistant Warning, vide order dated 19.02.2008
14. Shri C.P. Chhabra, Computer Terminal Operator Dropped, vide letter dated 20.10.2007
15. Shri Sushil Lakra, Clerk/Cashier Note of Caution, vide letter dated 20.10.2007
16. Sh. Manveer Jayant, Clerk/Cashier Note of Caution, vide letter dated 20.10.2007
17. Shri S. K. Gupta, Head Cashier Note of Caution, vide letter dated 20.10.2007
18. Shri Nathu Ram, Head Cashier Note of Caution, vide letter dated 20.10.2007
19. Sh. S.K. Dua, Manager Dropped.

61. Whether award of minor penalty to the officers, referred above, offends right of equality before law and equal protection of law available to the claimant? Equality before law and equal protection of laws are fundamental rights of every person, ordains Article 14 of the Constitution. The guiding principles laid in Article 14 are that persons, who are similarly situated, shall be treated alike both in privileges conferred and liability imposed, which means that amongst equals the law should be equal and should be equally administered and that like should be treated alike. Article 16 of the Constitution guarantees equality of opportunities for all citizens in matters relating to employment or appointment to any office under the State. What is guaranteed is the equality of opportunity. Like all other employers, Government is also entitled to pick and choose from amongst a large number of candidates offering themselves for employment. But the selection process must not be arbitrary. The guarantee given by clause (a) of Article 16 of the Constitution will cover (a) initial appointments (b) promotions (c) termination of employment (d) and matters relating to salary, periodical increments, leaves, gratuity, pension, age of superannuation etc. Matters relating to employment or appointments include all matters in relations to employment

both prior and subsequent to the employment which are incidental to the employment and form part of the terms and conditions of such employment.

62. Fundamental rights guaranteed by Article 14 forbids class legislation, but does not forbid classification or differentiation which rests upon reasonable ground of discretion. Classification is the recognition of the relations, and in making it the Government must be allowed a wide latitude of discretion and judgment. In a way, the consequences of such classification would undoubtedly be to differentiate persons belonging to that class from others. The classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and the differentia must have a rational relation to the object sought to be achieved. Classification may be made according to the nature of persons, nature of business, and may be based with reference to time.

63. Concept of equality guaranteed by Article 16 of the Constitution is something more than formal equality and enables the underprivileged groups to have a fair share by having more than equal chance and enables the State to give favoured treatment to those groups by achieving real equality with reference to social needs. 'Protection discrimination' enabled the State to adopt new strategy to bring underprivileged at par with the rest of the society, by providing all possible opportunities and incentives to them. Therefore a class may be allowed to have preferential treatment in the matter relating to employment or appointment. There cannot be rule of equality between members of separate and independent group of persons. Persons can be classified in different groups, based on in terms of nature of persons, nature of business and with reference to time.

64. Whether claimant could project that the officers/officials to whom charge sheet(s) were served were equally placed with him in the matter of commission of misconduct? As brought over the record, the claimant persuaded his superiors to believe about the identity of fictitious persons as genuine account holder(s). He made his superiors to pass forged withdrawal slips and cheques for payment. The bank has gone a step ahead when it proved that the claimant was one of the appropriator of the amount defrauded from the various accounts. He also tried to silence the voice of Shri Prem Chand and Trilok Pal by way of paying a sum of Rs.20000. These facts make out that the misconduct, committed by the claimant, project his culpable intention. As facts tell, the officer(s), who acted at the instance of the claimant when he made them to believe as to the identity of the customer(s), were negligent in discharge of their duties. Their negligence, in discharge of their duties, was taken to be culpable by the bank and treated as misconduct.

65. In *N.M. Roshan Umar Karim and Co.* (AIR 1936 Mad. 508) following three different meaning of the word 'misconduct' were given:

“(a) Misconduct is not established by proving even culpable negligence. It is something opposed to accident or negligence and is doing of something which the doer knows to be wrong or which he does recklessly not caring what the result would be.

(b) Misconduct is distinguished from accident and is not far from negligence - not only gross and culpable negligence and involves that a person misconducts himself when it is wrong conduct on his part, in the existing circumstances to do or to fail or omit to do a particular thing or to persist in the act, failure or omission or acting with carelessness. It is incorrect that a misconduct only refers to acts of gross or culpable negligence and not mere negligence.

(c) Misconduct does not ordinarily covers acts of negligence. The test of misconduct is not what a reasonable man would have done in the circumstances. It means that servant is guilty of something which was inconsistent with the conduct expected of him by the rules of the company”.

Above three meanings were quoted by the Apex Court with approval in *Shiv Nath* (AIR 1965 SC 1666).

66. In *Ram Singh* (1992 Lab. IC 2391) the Apex Court observed that though the expression 'misconduct' is 'not capable of precise definition, its reflection receives its connotation from the context, the delinquency in its performance and its effect on the discipline and the nature of duty. It may involve moral turpitude, it must be improper or wrong behaviour, unlawful behaviour, willful in character, forbidden act, a transgression of established and definite rule of action, code of conduct but not mere error of judgement, carelessness or negligence in performance of duty, the act complained of bears forbidden quality or character. Its ambit has to be construed with reference to the subject matter and the context wherein the term occurs, regard being had to the scope of the statute and the public purpose it seeks to serve.”

67. Generally speaking, misconduct is a transgression of some established and definite rule of action where no discretion is left except what necessity may demand, it is violation of definite law, a forbidden act. Misconduct means intentional wrong doing and would include unlawful behaviour. A conduct which is blameworthy would be misconduct, if by the commission or omission of acts of the employee, the employer suffers loss or it generates an atmosphere destructive of discipline. In any case, the action of misconduct must have some relation with the employee's duty to his employer. If the

act complained of is found to have some relationship to the affairs of the employer's business, having a tendency to affect or disturb the peace and good order of the establishment where the employee works or be subversive of discipline in any direct or proximate sense, such act would amount to misconduct.

68. An employee owes a duty to his employer to exercise reasonable care in performance of his duty. In other words, an employee must exercise reasonable care and skill in performance of his duties. When he deliberately neglects to carry out his work or perform his duty, when required to do that with reasonable care, he is guilty of misconduct of negligence. The concept of negligence has been the subject matter of great deal of judicial literature. The precise scope of the term negligence in the contract of employment has been a matter of controversy. However, for practical purposes, the statement of law relating to negligence in Halsbury's Laws of England (Fourth Edn. Vol.34, para 1, P.3) is illustrative:

"Negligence is a specific tort and in any given circumstances is the failure to exercise that care which the circumstances demand. What amounts to negligence depends on the facts of each particular case. It may consist in omitting to do something which ought to be done or in doing something which ought to be done either in a different manner or not at all. Where there is no duty to exercise care, negligence in the popular sense has no legal consequence. When there is a duty to exercise care, reasonable care must be taken to avoid acts or omissions which can be reasonably foreseen to be likely to cause physical injury to persons or property. The degree of care required in the particular case depends on the surrounding circumstances, and may vary according to the amount of the risk to be encountered and to the magnitude of the prospective injury. The duty of care is owed only to those persons who are in the area of foreseeable danger; the fact that the act of the defendant violated his duty of care to a third person does not enable the plaintiff who is also injured by the same act to claim unless he is also within the area of foreseeable danger. The same act or omission may accordingly in some circumstances involve liability as being negligent, although in other circumstances it will not do so. The material consideration are the absence of which is on the part of the defendant owed to the plaintiff in the circumstances of the case and the damage suffered by the plaintiff, together with a demonstrable relation of cause and effect between the two."

69. Negligence, thus, in legal sense, is a negative rather than a positive concept. In given circumstances, it is the failure to exercise the care which the circumstances

demand. Where there is a duty to take care or to exercise certain skill, failure to take care or exercise skill may indicate negligence. In other words, it is the absence of such care, skill and negligence, which is the duty of the person to bring in performance of his work. Negligence is characterized subjectively by an attitude of indifference and it is, therefore, opposed to intentional act. Omission to perform the duty may consist of a variety of things for instance, doing nothing or wasting time by loitering, loafing, idling or gossiping or sleeping during duty hours or pretence of waiting instructions with a view to shirk work or because of laziness or wilful indolence. An error can be indicative of negligence and the degree of culpability may indicate grossness of negligence. Classic examples of acts of negligence are of a Santry who sleeps at his post and allows enemies to slip through; a compositor carelessly placing a plus sign instead of minus sign in a question paper and may cause numerous examinees to fail; a compounder in a hospital or chemist shop who makes a mixture or other medicine carelessly may cause quite a few deaths; the man at airport who does not carefully filter the petrol poured into a plane may cause it to crash; the railway employee who does not set the point carefully may cause a head on collision. In such cases, a single act of negligence itself would constitute serious misconduct on the part of the employee.

70. The question whether a particular act or negligence constitutes gross misconduct or not, will depend upon peculiar facts and circumstances of the case and nature of work performed by an employee as well as the status or position he occupies. Seriousness of the misconduct would be aggravated particularly when the principal duty of the employee is to keep watch and vigilance on the property of his employer as in the case of watch and ward staff, who sleeps during duty hours and commits an act of gross negligence. If an act of negligence entails serious damages or consequences to the property of the employer, it would be an act of gross negligence of aggravated form. Standards of conduct expected of an employee would be yardstick to gauge the severity or triviality of his misconduct. A misconduct which may not be viewed in certain circumstances to be serious, can be serious in another set of circumstances. In other words, a particular misconduct is severe or otherwise would depend upon the facts of each particular case.

71. As an act done wilfully with a wrong intention would amount to misconduct. Therefore, definition of word 'intention' gains importance. Intention can be said to consciously or wilfully or deliberately doing an act which it is known or foreseen or appreciated or realized, will as a probable, perhaps highly probable, perhaps morally certain, consequence, expose the victim to the risk of peril of death or grievous bodily harm, even though the actor may not wish or desire the result to ensue, may be certain that it will ensue, or may have wanton disregard or indifference

as to whether it will nor not. Intention involves foresight or knowledge of the probable or likely consequences of injury, plus the desire or purpose or object or end to do an act which will bring those consequences about. Foresight or knowledge of the probable or likely consequences does not or may not, itself suffice to constitute intention, but it is naturally very strong evidence of such an intention. Foresight or knowledge is the best basis to find the requisite intention proved and this must normally be expected to follow.

72. Intention is man's state of mind, direct evidence thereof, except through his own confession, cannot be had and apart from confession it can be proved only by circumstantial evidence. In other words, intention is a matter of inference from all the circumstances of the case, such as motive, preparations made, declarations of the offender, nature and consequences of the act and the attendant circumstances. Like most words, the word 'intention' is capable of different shades of meaning. It is generally used in relation to the consequences of an act, the effect caused thereby, not in relation to the act itself – the voluntariness required to constitute an act is implied by the very word. The Penal Code uses the word 'intention' in the sense that something is intentionally done if it is done deliberately or purposely, in other words, it is willed though not necessarily a desired result or a result which is the purpose of the deed.

73. "Good faith" plays an important part in law of crimes and its presence is ordinarily a sufficient answer to a charge of criminality in many cases. Good faith is defined in positive aspect by Section 3(22) of the General Clauses Act, 1897, which definition is extracted thus:

"3. (22) A thing shall be deemed to be done on 'good faith' where it is in fact done honestly, whether it is done negligently or not."

74. Element of honesty, introduced by the above definition, is not present in the definition given in the Penal Code. Negative definition of the phrase is given in Section 52 of the Penal Code, which runs thus:

"52. Nothing is said to be done or believed in 'good faith' which is done or believed without care and attention'.

75. As defined by the Penal Code, definition of phrase 'good faith' has no reference to the moral element of honesty and right motive which are involved in popular significance of 'good faith', defined by General Clauses Act. To establish good faith under the penal law, it is necessary to prove that the person pleading good faith acted with due care and attention and an honest blunder

cannot be protected, without establishing the exercise of due care and attention. The plea of good faith may be negatived on the ground of recklessness indicative of want of due care and attention if the imputation in question, have been made as categorical statements of facts. However law does not exact the same degree of care and attention from all persons. It varies with the position they occupy. In this sense, the question of 'good faith' is always question of fact to be determined in accordance with the proved facts and circumstances of each case.

76. The 'due' care required must depend upon the nature of the act, its magnitude and importance and the facility a person has for the exercise of care and attention. It does not constitute 'good faith' necessarily because the person making the imputation believed it to be true. Due care and attention imply a genuine effort to reach the truth, and not the ready acceptance of an ill natured belief. A surgeon working in his surgery would be judged by a different standard from that applicable to a surgeon in the field. But where a quack unskilled in surgery performs an operation which even a trained surgeon seldom dares, he cannot be accredited with good faith, if his patient trusting him succumbs to his operation.

77. The circumstances that operate on the exercise of care and attention are so varied and variable that it is not possible to fix a general standard by which the presence or absence of 'good faith' may, in any case, be tested. But at the same time, in such cases, it is always permissible to argue ex post facto; that is to say, it may be shown that there was a want of 'good faith' because there was absence of the requisite care and caution. On the other hand, a person relying upon 'good faith' may show that he had taken the necessary care and caution, and that, therefore, his act was done in good faith. As observed by the Law Commission in its First Report: 'He will be required to prove that his conduct was such as to lead fairly to the inference that he acted in good faith as alleged. It is true that he cannot prove directly what was in his mind, but he may be able to prove facts by which this may be sufficiently manifested'. To satisfy the Court of his good faith, he must show at least that he acted advisedly and that he had reasonable ground prima facie for believing that he ought to do what he did.

78. In order to establish belief in good faith, a person's simple belief in good faith that circumstances are such and such, ought not to be sufficient, there ought to be sufficiently strong and just ground for his belief. Belief must have a foundation and that must be shown. Where a person acts with thoughtless precipitancy, without making sufficient inquiries and jumping to a conclusion upon materials wholly unjustifiable, it cannot be said that he had exercised good faith.

79. As a person, acting in good faith, is excepted from criminality, presence of good faith in each case must depend upon the circumstances which alone entitle a person to exemption from criminal responsibility. The burden lies on the accused to prove that he acted with good faith. The question of good faith must be considered with reference to the position of the accused and the circumstances under which he acted. The law does not exact the same care and attention from all persons regardless of the position they occupy.

80. As noted above a misconduct based on negligent act may enable the delinquent employee to take a defence of acting in good faith or due care as expected of him. If he fails in his defence his misconduct of acting in negligent manner and causing loss to his employer cannot be said to be of alarming nature. His negligence, if not of the categories detailed above, would not lead the employer to loose confidence in him and to award penalty of dismissal.

81. Claimant persuaded the aforesaid officers to pass fictitious withdrawal forms/cheques, without caring about identity of the account holders. On his representation, relating to the identity of account holder(s), aforesaid officers acted and could not discharge their duties with due diligence. Admittedly, aforesaid officers remained negligent in performance of their duties and committed misconduct. Claimant facilitated commission of fraud, made bank and the account holders victim of crime and became one of the appropriator of money defrauded on the strength of fake vouchers, which fact emerged out of the testimony of Shri Prem Chand, as detailed above. Claimant paid Rs.20,000.00 to Shri Prem Chand with an intent to dissuade him from pursuing his complaint any further. Thus, it is crystal clear that the claimant was one of the appropriator of the amount obtained by fraud. His persuasion led the officers to commit misconduct but he was standing on a different footing than the officers, referred above. His involvement in the misconduct is intentional while officers committed misconduct, being negligent in discharge of their duties. The claimant was standing on a different pedestal than the officers to whom minor punishments were awarded. In this situation, it does not lie in the mouth of the claimant to assert that he was placed on the same pedestal on which the aforesaid officers were, relating to misconduct committed by them. I am of the considered opinion that the claimant was placed differently, hence he cannot claim equal protection of law when punishment was awarded to him for the misconduct committed by him.

82. Whether the penalty of dismissal without notice, awarded to the claimant, would relate back to the date of order of dismissal passed by the bank? For an answer, it is expedient to consider precedents handed down by the

Apex Court. In *Ranipur Colliery* [(1959) Supp. 2 SCR 719] the employer conducted a domestic enquiry though defective and passed an order of dismissal and moved the Tribunal for approval of that order. It was ruled therein that if the enquiry is not defective, the Tribunal has only to see whether there was a prima facie case for dismissal and whether the employer had come to the bonafide conclusion that the employee was guilty of misconduct. Thereafter on coming to that conclusion that the employer had bonafide come to the conclusion that the employee was guilty, that is, there was no unfair labour practice and no victimization, the Tribunal would grant the approval which would relate back to the date from which the employer had ordered the dismissal. If the enquiry is defective for any reason, the Tribunal would also have to consider for itself on the evidence adduced before it whether the dismissal was justified. However on coming to the conclusion on its own appraisal of evidence adduced before it that the dismissal was justified its approval of the order of dismissal made by the employer on defective enquiry would still relate back to the date when order was made.

83. In *Phulbari Tea Estate* [1960 (I) S.C.R. 32] the domestic enquiry held by the employer culminating in the order of dismissal was found to be invalid, being in gross violation of the rules of natural justice. Even before the Tribunal, the employer did not lead proper evidence to justify the order of dismissal and contended itself by merely producing the statement of certain witnesses recorded during the domestic enquiry and the workman had no opportunity to cross-examine the witnesses before the Tribunal. In the absence of any evidence before it, justifying the dismissal, the Tribunal set aside the order of dismissal and granted compensation in lieu of reinstatement, which order was upheld by the Apex Court. In that case question of relating back of the order of dismissal did not arise.

84. In *P. H. Kalyani* [1963 (1) LLJ 673] the employer dismissed the workman after holding a domestic enquiry into the charges. Since some dispute was pending before the Industrial Tribunal, the employer applied for “approval” of action of dismissal in compliance with the proviso to Section 33(2)(b) of the Act. The workman made an application under Section 33-A of the Act. Apart from relying on validity of domestic enquiry, the employer adduced all the evidence before the Tribunal in support of its action. On basis of evidence before it, the Tribunal came to the conclusion that the facts of misconduct committed by the workman were of serious nature involving danger to human life and therefore dismissed the application under Section 33-A and accorded “approval” to the action of dismissal taken by the employer. In this situation the Apex Court held that if the enquiry is not defective and the action of the employer is bonafide,

the Tribunal will grant the approval” and the dismissal would “relate back to the date from which the employer had ordered dismissal”. If the enquiry is invalid for any reason, the Tribunal will have to consider for itself on the evidence adduced before it, whether the dismissal was justified. If it comes to the conclusion on its own appraisal of such evidence that the dismissal was justified, the dismissal would “still relate back to the date when the order was made”. Sasa Musa Sugar Works case [1959 (II) LLJ 388] was distinguished saying that observations made therein “apply only to a case where the employer had neither dismissed the employee nor had come to the conclusion that a case for dismissal had been made. In that case, the dismissal of the employee takes effect from the date of the award and so until then the relation of employer and employee will continue in law and in fact”.

85. D.C. Roy [(1976) Lab. I.C. 1142] is the illustration where domestic enquiry held by the employer was found to be invalid being violative of principles of natural justice and the employer had justified the order of dismissal by leading evidence before the Labour Court, on appraisal of which the Labour Court found the order of dismissal justified. In appeal, the Apex Court upheld the award with the observation that “the ratio of Kalyani’s case (supra) would therefore, govern the case and the judgment of the Labour Court must relate back to the date on which the order of dismissal was passed”.

86. In Gujarat Steel Tubes Ltd. [1980 (1) LLJ 137] inverted image of the D.C. Roy’s case was presented by a majority of three judge bench wherein it was held that “where no enquiry has preceded punitive discharge, and the Tribunal for the first time upholds the punishment, this Court in D.C. Roy Vs. Presiding Officer (supra) has taken the view that full wages be paid until the date of the award. There cannot be any relation back of the date of dismissal when the management passed the void order”. Though the court ruled that law laid in D.C. Roy is correct yet it followed obiter instead of the decision. Observations of the Apex Court in above decision, bearing on the relate back rule, were faulted in R. Thiruvirkolam [1997 (1) SCC 9] on the ground that they “are not in the line with the decision in Kalyani which was binding or with D.C. Roy to which Learned Judge Krishna Iyer J. was a party. It also does not match with the juristic principle discussed in Wade”. The view taken in R. Thiruvirkolam (supra) was affirmed in Punjab Dairy Development Corporation Ltd. [1997 (2) LLJ 1041].

87. In view of the catena of decisions, detailed above, it is clear that an employer can justify its action by leading evidence before the Tribunal. This equally applies to cases of total absence of enquiry and defective enquiry.

A case of defective enquiry stands on the same footing as no enquiry. If no evidence is led or evidence adduced does not justify the dismissal by the employer, the Tribunal can order reinstatement or payment of compensation as it may think fit. But if it finds on the evidence adduced before it that the dismissal is justified, the doctrine of relate back is pressed into service to bridge the time gap between the rupture of the relationship of employer and employee and the finding of the Tribunal.

88. If the workman is to be paid wages upto the date of the award of the Tribunal, the Parliament has to enact so, declares the Delhi High Court in Ranjit Singh Tomar (ILR 1983 Delhi 802). Obviously the Act does not make any provision for the situation. Precedents in Ghanshyam Das Shrivastava [1973 (1) SCC 656], Capt. M. Paul Anthony [1999 (3) SCC 679] and South Bengal State Transport Corporation [2006 (2) SCC 584] nowhere deal with the controversy, hence are not discussed.

89. In view of the facts detailed above, punishment of dismissal from service without notice would relate back to the date of the order. Claimant could not bring it to light that the order of dismissal from service would be applicable from the date of the award and not from the date of the order. All these facts would project that punishment of dismissal without notice, awarded to the claimant, is legal, fair and justified. Claimant could not show any illegality in the order of dismissal passed by the bank. The issue is, therefore, answered in favour of the bank and against the claimant.

Relief

90. In view of above discussion, I am of the considered opinion that the claimant is not a person on whom the bank can depend upon. Banking business is conducted on trust and confidence. When an employee is found not to be trustworthy, his retention in service may affect business of the bank. Such an employee cannot be retained in service. Therefore punishment of dismissal is not to be interfered with by this Tribunal. The claimant is not entitled to any relief, not to talk of relief of reinstatement in service. His claim statement is liable to be dismissed. Accordingly, it is concluded that the action of the bank in dismissing the claimant from service is legal and justified. Claim statement is brushed aside. An award is passed in favour of the bank and against the claimant. It be sent to appropriate Government for publication.

Dated : 31.3.2014

Dr. R. K. YADAV, Presiding Officer

नई दिल्ली, 24 अप्रैल, 2014

का.आ. 1294.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार युको बैंक के प्रबंधन के संबंधित नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 61/2006) को प्रकाशित करती है जो केन्द्रीय सरकार को 25/4/2014 को प्राप्त हुआ था।

[सं. एल-12012/8/2006-आईआर (बी-II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 24th April, 2014

S.O. 1294.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 61/2006) of the Central Government Industrial Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the Industrial Dispute between the management of UCO Bank and their workmen, which was received by the Central Government on 25/04/2014.

[No. L-12012/8/2006-IR (B-II)]

RAVI KUMAR, Section Officer

ANNEXURE

BEFORE SHRI J. P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/61/2006 Date : 01.04.2014

Party No. 1 : The Regional Manager,
United Commercial Bank,
Regional Office At 101,
Bhagwagar Layout,
Dharampath, Nagpur-440010

Versus

Party No. 2 : Shri Shrawan M. Nikhar,
C/o., Joher Hardware, Shop No. 1,
Binaki Mangalwari,
Near Kanji House, Nagpur-17.

AWARD

(Dated: 1st April, 2014)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of United Commercial Bank and their workman, Shri Shrawan Nikhar, for adjudication, as per

letter No.L-12012/8/2006-IR (B-II) dated 17.04.2006, with the following schedule:-

"Whether the action of the management of UCO Bank in dismissing the service of the Head Cashier Shri S.M. Nikhar is legal and justified? If not, what relief is the workman is entitled to?"

2. On receipt of the reference, parties were noticed to file their respective statement of claim and written statement, in response to which, the workman, Shri Shrawan Nikhar, ("the workman" in short) filed the statement of claim and the management of UCO Bank, ("party no.1" in short) filed the written statement.

The case of the workman as projected in the statement of claim is that the party no.1 is a nationalized bank and therefore, provisions of the Act are applicable to it and the service conditions of the employees are governed by the provisions of Sastry Award, Desai Award and different Bipartite Settlements and he came to be appointed in the services of party no. 1 as a clerk at Ghuggus branch w.e.f. 07.01.1983 and he was elevated to special allowance carrying post, i.e. as "Head Cashier Category E" w.e.f. 10.12.2002 and as he was the senior most clerk at Ghugus branch, the post of "Head cashier category E" was assigned to him and Ghuggus branch of the Bank is situated in the ambit of the vast establishment of the western coal fields Ltd., ("WCL" in short) and the entire salary, over time payment and other payments of the staff working in WCL in that area came to be routed through the said branch and there were sizable number of saving Bank accounts of the staff members of the WCL and other accounts of the persons living in the locality of Ghuggus. It is further pleaded by the workman that while he was working at Ghuggus branch, charge sheet dated 28.10.2003 consisting of three charges, under clauses 19.05 (j), 19.05 (q) and 19.05(e) of the Bipartite Settlement was served on him and he was suspended from services w.e.f. 30.06.2003 and the Disciplinary Authority appointed one shri N.P. Pande as the enquiry officer, who conducted the enquiry and perhaps on the basis of the report purported to have been submitted by the said enquiry officer, the disciplinary authority vide order dated 30.08.2004, awarded the punishment of dismissal from service without any notice on him and he came to be dismissed from service w.e.f. 30.08.2004 and he received the order of dismissal on 11.09.2004 and he preferred an appeal against the order of punishment, before the Appellate Authority, but his appeal was rejected and dismissed.

The further case of the workman is that the action of the party no.1 in dismissing him from services is not only illegal, but also unjustified and the manner, in which the enquiry was conducted and concluded against him demonstrates that the same was not fair and when he was suspended from the services, his headquarters was

whimsically came to be changed from Ghuggus to Ramtek in Nagpur district, for reasons not known to him and there was absolutely no logic in changing the headquarters and the Regional office of party no.1 is situated at Nagpur and the enquiry officer appointed to conduct the enquiry against him also came from Regional Office, Nagpur and in view of his suspension, a speedy and fair enquiry was supposed to be made against him, but from the available record of the enquiry, it can be found that the enquiry officer right from the beginning of the enquiry had taken a whimsical approach as to the place of conduction of the enquiry and further went on changing the venue of the enquiry for the reasons not known to him and when his headquarters was previously fixed at Ghuggus and subsequently changed to Ramtek, the enquiry should have been conducted either at Ghuggus or at Ramtek, so as to enable him to defend his case properly, but the same was not done and the dates of the initial sittings of the enquiry were fixed by the enquiry officer at Regional office, Nagpur and it would have been most logical and convenient for all the parties to continue the enquiry at Nagpur only, but the enquiry officer after fixing the enquiry on 06.01.2004 and 14.01.2004 at Nagpur, fixed the date of enquiry at Ghuggus on 17.01.2004 and 04.02.2004 and on 04.02.2004, his defence representative could not able to attend the enquiry and requested the enquiry officer over phone to adjourn the enquiry and the next date of the enquiry was agreed to be fixed on 24.02.2004 at Ghuggus and though the enquiry officer agreed to fix the date of enquiry as 24.02.2004, unilaterally, he changed the date from 24.02.2004 to 25.02.2004, which is clear from the change of the date from 24 to 25 made in the proceedings of the enquiry and he alongwith his defence representative attended Ghuggus branch for the purpose of enquiry on 24.02.2004, but there was no body at the Branch nor there was any message at the branch about the enquiry, to be conveyed to him and the changed date of enquiry fixed for 25.02.2004 was communicated in writing to him, which was received by him on 28.02.2004 and as such, the decision of the enquiry officer to proceed ex parte against him on 25.02.2004 is illegal and accordingly, the entire evidence taken on 25.02.2004 and on the subsequent dates, in his absence is also illegal and in the earlier proceedings, inspection of original documents were called for and the enquiry officer, before deciding to proceed ex parte did not bother to enquire as to whether inspection of original documents had been carried out or not and taking advantage of his absence, the enquiry officer made undue haste in continuing with the enquiry proceedings on 25.02.2004, 26.02.2004 and 27.02.2004 without taking into consideration of the fact that such dates of enquiry were not pre-intimated to him, so there was a total miscarriage of justice and on the said ground alone, the enquiry is liable to be declared as invalid and unfair.

It is further pleaded by the workman that the copies of the proceedings of the ex parte enquiry received by him subsequently, revealed that evidence came to be recorded by the enquiry officer from 25.02.2004 to 27.02.2004 and presenting officer was allowed to act as a witness, without putting him in the witness box and after closure of the evidence of the management ex parte, he was not given any chance to adduce evidence in his defence and the enquiry officer instead of acting as the enquiry officer, played the role of the prosecutor and asked many questions to the sole witness examined on behalf of the management, to fill in the gaps and lacunas in the evidence and the enquiry officer was biased against him and there was calculated design in the mind of the enquiry officer to conclude the enquiry hastily and that too ex parte and there was violation of the principles of natural justice and as the punishment was awarded against him on the basis of such illegal enquiry, the same is also liable to be quashed and set aside. It is also pleaded by the workman that from the text of the communication made by the disciplinary authority dated 21.04.2004, it is found that the Disciplinary Authority agreed with the findings of the enquiry officer that charge nos. 1, 2, 4 and 7 to 41 are proved against him and the disciplinary authority did not supply a copy of the enquiry report to him, even though called upon him to submit his show cause against the proposed punishment of dismissal from services without notice and even though supply of the copy of the enquiry report is mandatory provision of law, copy of such report was never supplied to him and on 11.05.2004, he appeared before the disciplinary authority for personal hearing in regard to the proposed punishment and tried to point out as to how the enquiry officer concluded the enquiry in a haste and non supply of the copy of the enquiry report, the disciplinary authority refused to hear him on that count and non of the said submissions were reflected in the notes of personal hearing and as such, the order impugned is liable to be set aside. The further case of the workman is that he was working as the Head Cashier and not the clerk and the posting of huge account on different dates and in different manners was made by the clerks, who had been assigned the said duties and he was no way connected with the posting of entries referred in the charge sheet and many times, he was entrusted with the payment of withdrawals as per situations warranted at the branch and the discrepancies found in the accounts were because of over sight, peculiar method of posting of salaries and over time to huge number of employees on different dates and inadequacy of staff and even though, there were mistakes in casting balance and checking the balance, there was no loss to the bank, since overdrafts if any, had been recovered and in any rate and in any event, malafide intention had not been proved as charged in the charge sheet and the enquiry officer lost sight of these facts in the ex parte

enquiry and the only witness examined by the management was not a hand writing exparte and his evidence was far from the truth and the witness deliberately avoided to remark upon the staff position and indifferent credits received from WCL for crediting the same in the accounts of their employees on different dates and therefore, the findings if any given by the enquiry officer purporting to have been proved the charges are perverse and are liable to be rejected and while awarding the punishment, differential treatment had been given by the authority in as much as on earlier occasions, the same Disciplinary Authority had taken lenient view in cases of misappropriation in respect of few members, who were of the same caste of the disciplinary authority, but harsh, unreasonable and uncalled for punishment has been imposed on him on colourable exercise of power and the punishment does not commensurate with the gravity of the misconduct and is shockingly disproportionate.

The workman has prayed to set aside the order dated 30.08.2004 and to reinstate him in service with full back wages and consequential benefits.

3. The party no. 1 in the written statement refuting all the allegations made in the statement of claim have pleaded inter-alia that the workman was working as head cashier category 'E' at Ghugus branch and he committed certain irregularities including making number of fictitious entries and intentional wrong debit/ credit entries in many saving accounts, resulting in overdrafts in so many accounts and he committed a fraud of Rs. 2000/- in S.B. Account no. 100 on 07.06.2003, while making the payment to the account holder by altering the amount in the said account from Rs. 13000 to Rs. 15000/- and the figure/ amount in the token book, cash abstract, cash payment book and the SBI ledger to cover up his fraudulent action and the matter was reported by the Manager, Ghugus branch on 09.06.2003, so one officer from the Regional Office was sent to Ghugus branch for investigation into the matter and the said officer submitted his report on 30.06.2003 and basing on the report of investigation, the workman was put under suspension vide order dated 30.06.2003 and on their request, the Special investigation officer, Mr. K.S. Ranganathan, ACO(Inspection) conducted special investigation into the matter on 17.07.2003 and submitted his report on 23.07.2003 and on the basis of the special investigation report, charge sheet was submitted against the workman on 28.10.2003 and on receipt of the charge sheet, the workman requested to allow him to see the original ledger/document/voucher and they advised the workman vide their letter dated 06.12.2003, to submit his reply to the charge sheet and also conveyed him that the original vouchers/ correspondence if any would be provided at the time of the enquiry and the notification of appointment of enquiry officer and presenting officer was issued on 09.12.2003 and Mr. N.P. Pande and Mr. V.B.

Kulkarni were appointed as the enquiry officer and presenting officer respectively and the enquiry was conducted on various dates during the period from 06.01.2004 to 18.03.2004 and the workman participated in the enquiry only on the first three dated and thereafter, neither the workman nor his defence representative participated in the enquiry for the reasons best known to them and the enquiry officer submitted his report on 08.04.2004, holding all the charges levelled against the workman except charge nos. 3, 5, 6, 11 and 12 to have been proved and taking into account the gravity of the irregularities, lapses and fraud committed by the workman, the authority vide letter dated 21.04.2004 asked the workman to appear on 11.05.2004 for personal hearing and the copy of the inquiry report was also sent to him and basing on the enquiry report and in due compliance of the applicable rules and procedure, the disciplinary authority issued the order of punishment of dismissal from services against the workman on 30.08.2004 and the appeal preferred by the workman against the order of punishment was dismissed by the Appellate authority.

It is also pleaded by the party no.1 that the workman accepted that Rs. 2000 had been taken by him and he had repaid the amount of Rs. 2000/- to the bank and that he did not attend the enquiry depending on his defence representative and in the past, the workman had been advised couple of times to improve, his behavioral attitude and his functioning in the bank and the charges levelled against the workman reflected that he had grossly abused his official position and failed to discharge his duties with utmost devotion and diligence and the principles of natural justice, regulation and procedure of law were adopted in carrying the investigation, special investigation, submission of charge sheet, appointment of enquiry officer and presenting officer and all possible opportunities were given to the workman to participate in the enquiry and the report of the enquiry officer was supplied to him and there is no merit in the grounds raised by the workman and the reference is deserved to be dismissed.

4. As this is a case of dismissal of the workman from services, after conducting of a departmental enquiry against him, the validity or other wise of the departmental enquiry was taken up for consideration as a preliminary issue and by order dated 22.05.2013, the same was held to be illegal, improper and against the principles of natural justice. It is necessary to mention here that the party no.1 was allowed to prove the charges levelled against the workman before the Tribunal by adducing evidence.

5. To prove the charges levelled against the workman, before this Tribunal, Party no.1 examined Shri Vilas Bhaurao Kulkarni as a witness and produced the documents, Exts. M-III to M-X. The documents, Exts. M-III to M-X are admitted into evidence and marked as exhibits on behalf of the party no.1 without formal proof, as the workman admitted the said documents.

No evidence was adduced by the workman in rebuttal.

6. The witness for the party no.1 in his evidence on affidavit has stated that the workman was working as head cashier category 'E' at Ghugus Branch and the workman committed certain irregularities and made number of fictitious entries and made intentional wrong debit/credit entries in many saving Bank Accounts, resulting in overdrafts in number of accounts and the workman committed a fraud of Rs. 2000/- in S.B. Account no. 1007 on 07.06.2003 while making the payment to the account holder and to cover up his fraudulent action altered the amount of W/s from Rs. 13000/- to Rs. 15000/- and the amount and figure in the token book, cash abstract, cash payment book and SBI Ledger and the matter was reported by the Manager, Ghugus Branch on 09.06.2003 vide letter No. RO/PAD/ 13/03 and party no. 1 deputed one officer from the office for investigation into the matter and the said officer submitted his report on 30.06.2003 and basing of the investigation report, charge sheet dated 28.10.2003 was submitted against the workman. After stating about the above stated facts, the witness for the party no. 1 in his evidence on affidavit has stated about the service of the charge sheet on the workman, submission of a letter by the workman in response to the charges, his own appointment as the enquiry officer to conduct the enquiry against the workman, issuance of notice to the workman about the enquiry and attending of the enquiry by the workman and as to how the departmental enquiry proceeded against the workman. The witness has further stated that the workman had accepted that Rs. 2000/- had been taken by him and he had repaid the amount of Rs. 2000/- to the Bank. The witness has also stated that in the past, the workman was advised couple of times to improve his behaviour and his functioning in the Bank.

In his cross-examination, this witness has admitted that he had never worked in Ghugus Branch of the Bank and the posting of the transactions made in the Branch of the Bank during the course of the day in the ledgers of the branch is the duty of the clerk concerned and checking of the entries made by the concerned clerk in the ledgers is the duty of the checking officer and he cannot say as to who was the checking officer of the entries made in the ledgers in regard to which allegations have been made in the charge sheet and he cannot say if the original documents basing on which charges were levelled against the workman have been produced before the Tribunal or not.

7. At the time of argument, it was submitted by the learned advocate for the workman that by order dated 22.05.2013, the departmental enquiry conducted against the workman was held to be illegal, improper and not in accordance with the principles of natural justice and the party no. 1 was ordered to lead evidence before the

Tribunal to prove the charges levelled against the workman and to prove the charges against the workman, party no. 1 examined one witness and the said witness has only stated about one charge i.e. about the workman altering the amount of Rs.13000/- to Rs. 15000/- in respect of Account no. 1007 dated 07.06.2003 in withdrawal slip and concerned registers and ledgers of the branch, but not a single document to prove even the said single charge has been produced by party no. I. From the materials on record, it is found that party no. 1 has miserably failed to prove the charge against the workman and as such, the workman is entitled for reinstatement in service with continuity, full back wages and all consequential benefits.

8. Per contra, it was submitted by the learned advocate for the party no.1 that the workman while working at Ghugus branch of the bank as head cashier category "E" made fictitious entries intentionally in many savings bank accounts resulting in overdrafts in so many accounts and he also committed fraud of Rs. 2000/- in respect of Account no. 1007 on 07.06.2003 while making payment to the account holder by altering the amount of Rs. 13000/- to Rs. 15000/- in the withdrawal slip and relevant registers and ledgers and the charges levelled against the workman were well proved in the departmental enquiry and it is clear from the evidence of the witness examined by party no.1 that the workman committed fraud of Rs. 2000/- in respect of Account no. 1007 on 07.06.2003 and as commission of grave misconduct has been proved against the workman, the punishment of dismissal from services imposed against the workman cannot be said to be shockingly disproportionate and the punishment is justified and there is no scope for the Tribunal to interfere with the punishment and is not entitled to any relief.

9. Perused the record including the evidence, both oral and documentary adduced by the parties. Admittedly, by order dated 22.05.2013, the departmental enquiry conducted against the workman was held to be illegal, improper and against the principles of natural justice and party no.1 was directed to prove the charges against the workman by adducing evidence before this Tribunal. The party no.1 in order to prove the charges against the workman has examined only one witness, namely, Mr. Vilasbhaurao Kulkarni, who had acted as the enquiry officer to conduct the enquiry against the workman. From the admission of the witness, it is clear that the witness had never worked at Ghugus branch of the Bank, where the misconducts were alleged to be committed by the workman. This witness in his evidence on affidavit has mostly stated about the submission of the charge sheet against the workman and as to how the department enquiry was conducted.

On perusal of the charge sheet submitted against the workman, it is found that as many as 44 allegations were made against the workman. However, the witness for

the party no.1 has stated about the allegation no. 33. However, party no.1 has neither produced the preliminary enquiry report submitted against the workman nor the withdrawal slip and concerned records and ledgers to prove the said single charge also. From the evidence adduced by the party no.1, it is found that party no.1 has failed to prove the charges against the workman.

In view of the failure of the party no.1 to prove the charges against the workman, the punishment imposed against him cannot be sustained.

It is to be mentioned here that the learned advocate for the party no. 1 has cited the decision reported in 2012-IV-LLJ-79 (Del) (Syndicate Bank Vs., R.K. Rohilla). However, with respect, I am of the view that the said decision has no application to this case, as in this case, it is held that the charges levelled against the workman have not been proved.

10. Now the only question remains for consideration is as to what relief or reliefs the workman is entitled to. As it is held that party no. 1 has failed to prove the charges against the workman, the workman is entitled for reinstatement in service with continuity and all consequential reliefs. So far the back wages is concerned, taking into consideration the entire facts and circumstances of the case, I think that grant of 50% of the wages from the date of dismissal of the workman till his actual date of reinstatement in service. Hence, it is ordered:-

ORDER

The action of the management of UCO Bank in dismissing the service of the Head Cashier Shri S.M. Nikhar is illegal and unjustified. The workman is entitled for reinstatement in service with continuity and all consequential reliefs. The workman is also entitled for 50% of the wages from the date of his dismissal till his actual date of reinstatement in service. The party no.1 is directed to implement the award within 30 days of publication of the award in the official gazette.

J. P. CHAND, Presiding Officer

नई दिल्ली, 24 अप्रैल, 2014

का.आ. 1295.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पंजाब एण्ड सिंध बैंक के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, चण्डीगढ़ के पंचाट (संदर्भ संख्या 506/2005) को प्रकाशित करती है जो केन्द्रीय सरकार को 25/4/2014 को प्राप्त हुआ था।

[सं. एल-12012/1/2000-आईआर (बी-II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 24th April, 2014

S.O. 1295.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 506/2005) of the Central Government Industrial Tribunal-cum-Labour Court-II, Chandigarh as shown in the Annexure in the Industrial Dispute between the management of Punjab and Sind Bank and their workmen, which was received by the Central Government on 25/4/2014.

[No. L-12012/1/2000-IR (B-II)]

RAVI KUMAR, Section Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Present : Sri Kewal Krishan, Presiding Officer.

Case No. I. D. No. 506/2005

Registered on 22.8.2005

Sh. Vijay Kumar,
S/o Late Sh. M. Ram,
Street Mochianwali
Bhadra Bazar,
Sirsa (Haryana).

...Petitioner

Versus

Punjab and Sind Bank,
The Chief Manager,
P&SB, Zonal Office,
Sector 17B, Chandigarh

...Respondents

APPEARANCES :

For the workman : Sh. Vikram Bajaj, Adv.

For the Management : Sh. J.S. Sathi, Adv.

AWARD

(Passed on 4.3.2014)

Central Government vide Notification No. L-12012/1/2000-IR(B-II) Dated 7.6.2000, by exercising its powers under Section 10 Sub-section (1) Clause (d) and sub-Section (2-A) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'Act') has referred the following Industrial dispute for adjudication to this Tribunal :

“Whether the action of the management of Punjab and Sind Bank Zonal Office, Chandigarh to fill up the vacancy of Sub-staff by engaging empanelled

temporary peons for short spells one after the another instead of filling up the vacancy regularly is justified? If not, what relief is the disputant Sh. Vijay Kumar, engaged by Sirsa Branch who has claimed to have been replaced by another temporary workman, is entitled to and is he entitled for continuity of service?"

In response to the notice, the workman appeared and filed statement of claim pleading that he was appointed as Peon at Sirsa by the respondent management where he worked from 5.6.1997 to 22.11.1997 continuously and against permanent vacancy. No appointment letter was given to him. The respondent management without adopting any procedure terminated his services on 22.11.1997 which illegal. That the bank appointed other persons after the termination of his services and the action of the bank is illegal and he is entitled to reinstatement in service with all the benefits.

Respondent management filed written statement admitting that workman did service for 130 days and he was engaged as a casual part time labourer to meet the exigencies of the work and workman has no legal right to continue in service. He was not engaged against any sanctioned post. It is denied that any person was employed after the termination of the service of the workman. That there is no violation of any provision of law.

Workman led evidence and filed his affidavit.

On the other hand the management did not examine any witness.

I have heard Sh. Vikram Bajaj, counsel for the workman and Sh. J.S. Sathi, counsel for the management and perused the file.

Learned counsel for the workman carried me through the para 6 of the affidavit of the workman and submitted that Teja Singh, Reshma and others were appointed after the termination of the services of the workman which is in violation of Section 25H of the Act and the workman is entitled to be reinstated in service.

I have considered the contention of the learned counsel.

The reference is whether the action of the management to fill up the vacancies of Sub-staff by engaging empanelled temporary Peons for short spells is justified? There is no evidence on the file that any such practice is being followed and if followed, the same is unjustified.

It is further mentioned in the reference that the workman claims that he has been replaced by another temporary workman. Workman has pleaded in para 12 of the claim petition that after the termination of his services,

the respondent management appointed another person but did not disclose the name of the person who was employed in his place. He has mentioned the names of Teja Singh, Naresh Kumar, Pawan Kumar, Subhash Chander and Anil Kumar in para 6 of the affidavit and at the same time further mentioned that they have been also replaced by Daya Nand. There is no evidence whatsoever to establish on the file that the said persons were ever employed by the bank after termination of the services of the workman and it cannot be said that there was violation of Section 25F of the Act. Here, the learned counsel submitted that the statement of the workman remains un rebutted on the file as the respondent management has not led any evidence and therefore it be taken that the persons were employed after the termination of the services of the workman. If the management did not lead any evidence, it cannot be said that the persons as find mention in the affidavit were employed after the termination of the services of the workman more particularly when their names do not find mention in the claim petition. The ratio of the authorities titled State of Haryana Vs. Dilbagh Singh reported in 2007(1) SCT 808; and Mehboob Khan Vs. Presiding Officer, Labour Court Ambala reported in 2013(3) SCT are not applicable to the facts of the present case as violation of Section 25H of the Act is not proved on the file. Again it is not the case of the workman that the provision of Section 25F has been violated for the obvious reason he did not complete one year of continuous service as defined under Section 25B of the Act.

In result it is held that workman has failed to prove that the action of the management for filling up the vacancies by engaging empanelled temporary Peons is illegal and not justified. He is not entitled to any relief. Thus the reference is accordingly answered against the workman. Let hard and soft copy of the award be sent to the Central Government for further necessary action.

KEWAL KRISHAN, Presiding Officer

नई दिल्ली, 24 अप्रैल, 2014

का.आ. 1296.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पंजाब एण्ड सिंध बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, चण्डीगढ़ के पंचाट (संदर्भ संख्या 1062/2005) को प्रकाशित करती है जो केन्द्रीय सरकार को 25-4-2014 को प्राप्त हुआ था।

[सं. एल-12012/181/1998-आईआर (बी-II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 24th April, 2014

S.O. 1296.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 1062/2005) of the Central Government Industrial Tribunal-cum-Labour Court-II, Chandigarh as shown in the Annexure in the Industrial Dispute between the management of Punjab and Sind Bank and their workmen, received by the Central Government on 25-4-2014.

[No. L-12012/181/1998-IR (B-II)]

RAVI KUMAR, Section Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Present : SRI KEWAL KRISHAN, Presiding Officer

Case No. I.D. No. 1062/2005

Registered on 20.9.2005

Sh. Gurnam Singh,
C/o Tek Chand Sharma, 25,
Sant Nagar, Civil Lines,
Ludhiana-140001

...Petitioner

Versus

The Zonal Manager,
Punjab and Sind Bank,
Zonal Office, Sector 17-B,
Chandigarh

....Respondent

APPEARANCES :

For the workman : Ex parte

For the Management : Sh. J.S. Sathi, Adv.

AWARD

(Passed on 5.3.2014)

Central Government vide Notification No. L-12012/181/98/IR(B-II) Dated 28.2.1999/8.3.1999, by exercising its powers under Section 10 Sub-section (1) Clause (d) and Sub-Section (2-A) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'Act') has referred the following Industrial dispute for adjudication to this Tribunal:-

“Whether the action of the management of Punjab and Sind Bank through General Manager in terminating the service of Sh. Gurnam Singh w.e.f. 14.6.89 is justified and legal? If not, what relief the concerned workman is entitled for and from what date?”

In response to the notice, the workman submitted of claim pleading that he joined the bank as Peon at Godewal where he worked from January, 1985 to 30.11.1985 i.e. 157 days; and thereafter was transferred to another branch where he worked for 129 days and thus he worked for more than 240 days when his services were illegally terminated on 14.6.1989 without serving any notice and payment of compensation. That the persons who were junior to him were regularized. That the work against which the workman was employed was of permanent nature and the same was available even after termination of his services. That he was not reinstated despite request. Since his termination is in violation of the provisions of Section 25F and 25G of the Act, he be reinstated in service.

Management filed written reply pleading that the workman did not complete 240 days of service and no person junior to him was retained in service. He was only employed due to the exigency of the work and he cannot claim to be absorbed in service as a matter of right.

Workman appeared in the witness box and filed his affidavit reiterating the case as set out in the claim petition.

Workman was proceeded against ex parte vide order dated 20.12.2013.

Management was proceeded against ex parte vide order dated 27.2.2012.

However, Mr. J.S. Sathi appeared on behalf of management and was heard.

It is the case of the workman himself that he worked from January 1985 to 30.11.1985 for 157 days and thereafter he worked at another place from October 1988 to 1989 at another branch for over 129 days. Thus he did not continuously work for a period of one year, during the period of 12 calendar months preceding the date with reference to which conclusion is to be made as find mention in Section 25B of the Act and therefore he was not to be served with any notice or to be paid any compensation as envisaged under Section 25F of the Act. There is nothing on the file to suggest that any person junior to the workman was retained in service. It cannot be said that there was violation of Section 25G of the Act.

In result, it is held that the termination of the workman by the management cannot be termed as illegal and he is not entitled to any relief. The reference is accordingly answered against the workman. Let hard and soft copy of the award be sent to the Central Government for further necessary action.

KEWAL KRISHAN, Presiding Officer

नई दिल्ली, 24 अप्रैल, 2014

का.आ. 1297.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पंजाब एण्ड सिंध बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय-II, चण्डीगढ़ के पंचाट (संदर्भ संख्या 602/2005) को प्रकाशित करती है जो केन्द्रीय सरकार को 25-4-2014 को प्राप्त हुआ था।

[सं. एल-12012/32/2003-आईआर (बी-II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 24th April, 2014

S.O. 1297.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 602/2005) of the Central Government Industrial Tribunal-cum-Labour Court-II, Chandigarh as shown in the Annexure in the Industrial Dispute between the management of Punjab and Sind Bank and their workmen, received by the Central Government on 25-4-2014.

[No. L-12012/32/2003-IR (B-II)]

RAVI KUMAR, Section Officer

ANNEXURE

**IN THE CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT-II,
CHANDIGARH**

Present : Sri Kewal Krishan, Presiding Officer**Case No. I.D. No. 602/2005****Registered on 23.8.2005**

Sh. Zulfi Ram,
S/o Sh. Bakshi Ram,
H. No. 5558,
Sector 55,
Chandigarh

...Petitioner

Versus

The Zonal Manager,
Punjab and Sind Bank,
Bank Square, Zonal Office,
Sector 17B, Chandigarh

...Respondents

APPEARANCES :

For the workman : Sh. Krishan Lal, Adv.

For the Management : Sh. A.P.S. Guliani, Adv.

AWARD

(Passed on 18.3.2014)

Central Government vide Notification No. L-12012/32/2003-IR(B-II) Dated 13.6.2003, by exercising its powers under Section 10 sub-section (1) Clause (d) and sub-section (2-A) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'Act') has referred the following Industrial dispute for adjudication to this Tribunal :

“Whether the action of the management of Punjab and Sind Bank in terminating the services of Sh. Zulfi Ram, S/o Sh. Bakshi Ram, Ex-Peon (daily wages basis) w.e.f. 1.1.2002 without any notice and without any retrenchment compensation is legal and just? If not, what relief the concerned workman is entitled to and from which date?”

In response to the notice the workman appeared and submitted statement of claim pleading that he was engaged as Peon with respondent management on daily wage basis in Zonal Stationary Cell, Sector 26, Chandigarh w.e.f. 1.8.1990 to 31.8.1990. Thereafter he worked from 1.11.1990 to December 1992 on daily wage basis. He was appointed as temporary peon on minimum of the pay scale and was posted at Garkhal where he worked without any break from 1st August, 1994 to 30.9.1995. He continuously worked from January 1996 to 31.12.2001 at Branch Office Manauli, District Ropar. His services were arbitrarily terminated without paying him any compensation in violation of Section 25F of the Act. After his termination, another person was appointed in his place. Since his termination is against the provisions of law, management be directed to reinstate him in service with all the benefits.

Respondent management filed written statement pleading that the bank has its recruitment rules/procedure for appointment of peon and the appointing authority is the Zonal Head of a particular zone. The workman was not appointed by following the procedure and therefore no right accrued to him to remain in the employment of the service. He was employed on purely temporary basis and being employed at different branches of the bank, the period cannot be clubbed together to determine the length of service. It is denied that any person was employed after the termination of the service of the workman.

It is further pleaded that there is no permanent vacancy of the post of peon in the bank and as such workman cannot be granted the relief claimed.

Parties led their evidence.

In support of its case the workman appeared in the witness box and filed his affidavit reiterating his case as set out in the claim petition.

On the other hand, management has examined Ramesh Chander who filed his affidavit reiterating the stand taken by the management in its written statement.

I have heard Sh. Krishan Lal, counsel for the workman and Sh. A.P.S. Guliani, counsel for the management and perused the file with assistance.

The workman has specifically pleaded in para 1 of the statement of claim that he worked in Zonal Stationary Cell, Sector 26, Chandigarh from 1.8.1990 to 31.8.1990; and thereafter he worked from 1.11.1990 to December 1992 on daily wage basis. Thereafter he was appointed as a temporary peon on the minimum of pay scale and posted as Garkhal where he worked from 1.8.1994 to 30.12.1995. He continuously worked from January 1996 to 31.12.2001 at Manauli Branch, District Ropar. The management did not controvert the averments in its written reply and simply pleaded that workman was not employed as per the rules i.e. by the Zonal Head and the period he served at different branches cannot be clubbed together. It means the management admits that the workman was employed initially on daily wage basis and thereafter in the minimum pay scale at Garkhal where he worked from 1.8.1994 to 30.9.1995 and thereafter from January, 1996 to 31.12.2001 at Manauli District Ropar. Thus, lastly the workman worked for more than 6 years continuously. There is no evidence on the file that the workman did not work continuously at Branch Office Manauli and thus he continuously worked for more than 240 days in a calendar year and his services would not have been terminated without complying with the provisions of Section 25F of the Act. It is admitted case he has not been paid any compensation or served the notice as required under the said Section and therefore termination of service being a retrenchment without payment of compensation is not legal. If the bank authorities did not follow the procedure in appointing the workman, he cannot be blamed for the same as it is for the concerned authorities to think over the matter before employing the workman. Though it was pleaded that there is no vacant permanent post of peon in the bank and therefore workman cannot be adjusted but no cogent evidence has come on the file that no such post is available in the bank.

In similar cases and against the present respondent management, in Writ Petition No.18154 of 2007 titled Baljit Singh Vs. Presiding Officer and Others, the Hon'ble High Court ordered the reinstatement of the workman with continuity of service but without back wages.

In result, it is held that the action of the management in terminating the service of the workman w.e.f. 1.1.2002 is illegal and he is entitled to reinstatement with continuity of service but without back wages. Respondent management is directed to take him back in service within one month from the publication of the award. The reference is accordingly answered in favour of the workman. Let hard and soft copy of the award be sent to the Central Government for further necessary action.

KEWAL KRISHAN, Presiding Officer

नई दिल्ली, 24 अप्रैल, 2014

का.आ. 1298.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक ऑफ इंडिया के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारियों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय-II, चण्डीगढ़ के पंचाट (संदर्भ संख्या 760/2005) को प्रकाशित करती है जो केन्द्रीय सरकार को 25/4/2014 को प्राप्त हुआ था।

[सं. एल-12012/241/1997-आईआर (बी-II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 24th April, 2014

S.O. 1298.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 760/2005) of the Central Government Industrial Tribunal-cum-Labour Court-II, Chandigarh as shown in the Annexure in the Industrial Dispute between the management of Bank of India and their workmen, received by the Central Government on 25/4/2014.

[No. L-12012/241/1997-IR (B-II)]

RAVI KUMAR, Section Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Present : Sri KEWAL KRISHAN, Presiding Officer

Case No. I.D. No. 760/2005

Registered on 2.9.2005

The General Secretary,
Bank of India Employees Association,
C/o Bank of India,
Sector 17, Chandigarh

....Petitioner

Versus

The Zonal Manager,
Bank of India, Zonal Office,
181-182, Sector 17,
Chandigarh

...Respondents

APPEARANCES :

For the Workman : Sh. O.P. Batra, Adv.

For the Management : Sh. Ranjan Lohan, Adv.

AWARD

(Passed on 12.3.2014)

Central Government vide Notification No. L-12012/241/97/IR(B-II) Dated 26.2.1998, by exercising its powers under Section 10 sub-section (1) Clause (d) and sub-Section (2-A) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'Act') has referred the following Industrial dispute for adjudication to this Tribunal :

“Whether the action of the management of the Bank of India in imposing of punishment of reduction of two increments and denial of salary and allowances for period of suspension of Sh. Jatinder Paul Bhagi is legal and justified? If not, to what relief the concerned workman is entitled and from what date?”

The workman while employed at Mai Heeran Gate Branch, Jalandhar was served with the following charge-sheet :

CHARGE-SHEET

On 18th July 1995 between around 11 to 11.30 AM when Sh. Surinder Kumar staff – Subordinate was receiving clearing cheques from some customer on the seat/counter between your seat and the cash cabins you entered into argument and scuffled with Sh. R.K. Khanna, staff Cashier-in-Charge of the Branch during the banking hours and in presence of customers. In the process Sh. R.K. Khanna was also manhandled by you which resulted in a swelling on his forehead. You thereby created a disorderly scene on the branch premises and also tarnished the image of the bank.

He submitted reply and after considering the same not satisfactory, Inquiry Officer was appointed who after conducting an inquiry submitted a detailed report dated 29.3.1996 holding that the charges are proved against the workman. Thereafter a show cause notice was issued to the workman and after getting the reply and giving him personal hearing, punishment was imposed by bringing him down to lower stage in the scale of pay by two stages in terms of Clause 21(iv)(c) of Bipartite Settlement dated 14.2.1995.

Now according to the workman it was Mr. R.K. Khanna who picked up the quarrel and he was not at fault. That the Inquiry Officer acted in a biased manner and under the pressure of the Union, he was not allowed to engage a counsel. He was also not supplied the copy of the brief submitted by the Presenting Officer as well as copy of the inquiry report and the punishing authority without considering his written statement imposed the penalty. The appeal preferred by him was dismissed

without assigning any reason. That the order of punishment being illegal is liable to be set aside.

The respondent management filed written reply pleading that the inquiry was conducted as per rules and punishment awarded is legal and valid.

The case was adjourned from time to time for arguments on the question whether the inquiry was fair and legal, and on 9.9.2010, the learned counsel for the workman submitted that he challenged the fairness of the inquiry on the ground that the workman was awarded punishment without sufficient evidence and the Court observed that this fact do no relate to the fairness of inquiry and the reference centers around the punishment and its justification and the said order reads as follow :

Workman and counsel for the parties present. Vide order dated 4.2.2005 the case is fixed for arguments on fairness of inquiry. In his statement recorded today and placed on record the learned counsel for workman submits that he is challenging the fairness of inquiry on the grounds that the workman was awarded punishment without sufficient evidence. He also submitted that on no other ground the fairness of enquiry is challenged.

So far as the punishment is concerned that will be considered after hearing of the entire case. Whether there was or was not sufficient evidence for punishing the workman does not relate to the fairness of enquiry? The reference centers around the punishment and its justification. Let the case be fixed for the cross-examination of the witness of the parties.

Thus, the Court gave a finding that the reference is regarding the justification of the punishment awarded to the workman and this order being not challenged by the workman has attained finality.

Though the case was adjourned from time to time for cross-examination of the witnesses but none was produced and thereafter the evidence of the parties was closed vide order dated 22.12.2011.

I have heard Sh. O. P. Batra, counsel for the workman and Sh. Ranjan Lohan, counsel for the management and perused the file carefully.

It was argued by Mr. O.P. Batra, counsel for the workman that the workman was awarded double punishment i.e. by bringing him down to lower stage in the scale of pay by two stages, as well as his suspension period was ordered to be treated as such and the punishment so awarded is not justifiable in the entirety of the circumstances and is liable to be set aside.

Learned counsel for the management has contended that the punishment awarded is legal and valid and this Court has limited powers to interfere with the punishment awarded and in the present case when the workman has mishandled a co-workman, the punishment awarded is justified.

I have considered the respective contentions.

The relevant portion of the punishment order read as follows:

It is therefore hereby ordered that the following punishment be imposed upon you with immediate effect:-

“Bringing down to lower stage in the scale of pay by two stages in terms of clause 21(iv)(c) of the Bipartite Settlement dated 14.2.1995.”

Accordingly your basic pay shall stand reduced by two stages with immediate effect. As regard your suspension in terms of the order No. RO:P:IR:39 dated 17.4.1996, lifting your suspension, the decision in respect of regularization as otherwise of the period of suspension was to be taken while passing of this final orders. In this respect it is hereby confirmed. As such the said period shall not be treated as on duty and you shall not be entitled for any pay and allowances etc. for the said period other than the subsistence allowance paid/payable to you. However, the said period shall count for qualifying service under the Bank of India (Employees) Pension Regulations, 1995.

There is no denial of the fact that the power of Court to interference with the quantum of punishment are limited and can only interfere with it when the same is not justified from the record. As stated above, the inquiry proceedings are not under challenge. The charge against the workman was that he entered into an argument and scuffled with Sh. R.K. Khanna and also manhandled him which resulted in a swelling on his forehead. Thus the perusal of the charge-sheet shows that workman was charged on account of the fact that it was he who entered into an argument and scuffled with Sh. R.K. Khanna which resulted in swelling on his forehead.

The Inquiry Officer recorded the finding at Page No.15 of its inquiry report as found at Page No.165 on the file of this Court and it read as follow :

From the above it is clear that there was swelling on the forehead of Mr. Khanna after the incident. It is

also clear that there was manhandling of Mr. Khanna by Mr. Bhagi. In my opinion when there is scuffle, i.e. hathapai, both sides participate though degree of participation by the two may vary. Hence when the charge of scuffle is proved, the charge of manhandling is automatically proved. However it could not be proved that swelling on the forehead of Mr. Khanna was due to manhandling by Mr. Bhagi. It is also possible that swelling may be there prior to occurrence of incident as Mr. Khanna was working normally at his seat after the incident.

The inquiry officer found that there was a scuffle in which both the sides participated though the degree of participation may have varied. He did not record any clear-cut finding that it was the workman who entered into an arguments and scuffled with Sh. R.K. Khanna. The Inquiry Officer gave a definite finding that the swelling on the forehead of Mr. Khanna was not proved due to manhandling by the workman. As per the charge-sheet, it was the workman who started the argument and it was he who scuffled with Mr. Khanna, meaning thereby, he was the person who initiated the incident but the Inquiry Officer has nowhere given a finding that the incident took place at the instance and instigation of the workman. Rather, the Inquiry Officer came to the conclusion that there was a scuffle in which both sides participated and he did not indict the workman anywhere that it was he who initiated the argument as well as the scuffle and in the process also mishandled Mr. Khanna. His finding that during the incident both the sides participated shows that he was unable to pin-point that whether it was the workman or Mr. Khanna who initiated the argument and the scuffle and when it is so, it cannot be said that it was the workman who is guilty of misconduct.

In view of the findings of the Inquiry Officer himself, the punishment awarded to the workman vide order dated 17.4.1996 do not seem to be legal on the face of it and is liable to be set aside.

In result, the impugned order dated 17.4.1996 vide which punishment of reduction of two increments were imposed is set aside and he is entitled to all the wages during the period he remained under suspension minus the subsistence allowance etc. paid to him during the said period. Let hard and soft copy of the award be sent to the Central Government for the further necessary action.

KEWAL KRISHAN, Presiding Officer